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DIVISION I,
OF THE STATE OF WASHINGTON

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PHOENIX DEVELOPMENT, INC., a Washington
Corporation, and G&S SUNDQUIST THIRD FAMILY
LIMITED PARTNERSHIP, a Washington Limited
Partnership,

Appellants,

v.

CITY OF WOODINVILLE, a Washington Municipal
Corporation, and CONCERNED NEIGHBORS OF
WELLINGTON, a Washington Nonprofit Corporation,

Respondent.

BRIEF OF RESPONDENT CITY OF WOODINVILLE

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A. INTRODUCTION

1. The Growth Management Act (GMA) and Land Use Planning Arguments in Petitioner's Opening Brief are Irrelevant to the Subject Matter of this Appeal.

The decision to be made by this court does not involve the review or collateral attack on the past legislative decisions¹ of the Woodinville City Council that allow for and maintain R-1 residential zoning in the Leota and Wellington neighborhoods of Woodinville. *Thurston County v. WWGMHB*, 164 Wn.2d 329, 190 P.3d 38 (2008); *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007). Maintenance of R-1 zoning in these neighborhoods remains a viable option for the City Council under the City's Comprehensive Plan.² The properties are currently zoned R-1 on the City's zoning map³, consistent with the City's development regulations⁴ and comprehensive plan. Whether or not the existing R-1 zoning designation for the Leota and Wellington neighborhoods encourages "sprawling, suburban one-acre development" as characterized

¹ Legislative decisions include both the adoption of Comprehensive Plan policies and development regulations codified in the Woodinville Municipal Code ("WMC").

² See City Land Use Goals and policies there under, Numbered: LU-1.1; LU-2; LU-3.4.1; 3.4.2. See Appendix C hereto.

³ The City Zoning Map from the hearing record is attached hereto as Appendix D.

⁴ See zoning regulations in Appendix E.

by Phoenix, or represents the appropriate zoning for the current level of public services as determined by the Woodinville City Council⁵, is not a determination to be made by this Court in deciding this appeal.

2. Citizen Participation.

The introductory statement made by Phoenix are simply a passionate “setup” for their argument that the City Council bowed to intense neighborhood pressure, rejected smart growth and embraced sprawl. Phoenix argues that the City Council’s unlawful and erroneous action must be reversed. The record, however, fails to demonstrate the rezone denial resulted from “public pressure” on the City Council. On the contrary, the record, as demonstrated by the Concerned Neighbors of Wellington (CNW) in their briefing, is replete with well-researched and verified oral testimony and documentary evidence submitted by members of CNW and other residents of the neighborhoods throughout the land use proceeding. **Public participation in land use matters is both encouraged and mandated by state statutes and local regulations. See** RCW 36.70A, RCW 36.70B, WMC Chapter 17.11 (Public Notice), and WMC Chapter 17.15 (Open Record Public Hearing). It is disingenuous for the attorneys arguing on behalf of their developer clients to consistently

⁵ The Council’s decision denying the rezones are included in Appendix A and B.
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characterize responsible public participation as something “negative,” tainting the decision making process. Public opposition is a factor that may be legitimately considered by the City Council; it just can’t be the *sole* basis for its decision. *Henderson v. Kittitas County*, 124 Wn. App. 747, 755, 100 P.3d 842 (2004), citing *Tugwell v. Kittitas County*, 90 Wn. App. 1, 9, 951 P.2d 272 (1998).

3. Co-operation with CNW in briefing.

As stated by Counsel for CNW in their briefing, the City and CNW have collaborated in their briefing to this court, with the City’s briefing emphasizing the municipal land use law issues and CNW emphasizing the substantial evidence in the hearing record supporting the decision of the City Council.

B. STATEMENT OF THE CASE

Phoenix proposes to rezone two properties from R-1 (1 unit per acre) to R-4 (4 units per acre). M Ex. 1 and WT Ex. 1. The properties are located in the City of Woodinville in the Leota Neighborhood and more particularly in the area of the neighborhood known as the Wellington

Hills. The FEIS at page 3.4-2 (Appendix G) describes the neighborhoods as follows:

Leota Neighborhood

The two proposals are located within the Leota neighborhood. **The Leota neighborhood is predominately low-density single-family homes, many developed on 1-acre lots and most without public sewer.** There is a scattering of undeveloped properties throughout the neighborhood. There is an existing Neighborhood business area at the intersection of 156th Ave NE with Woodinville -Duvall Road. Lake Leota is a small lake surrounded by single-family residences located in the southeast portion of the Leota neighborhood. **The Wellington Hills Golf Course and large-lot single-family residential uses in unincorporated Snohomish County border the Leota neighborhood to the north.** Figure 3.4-2(b) shows land parcels by size.

Wellington Hills

The area in which the two proposal sites are located is commonly known as Wellington Hills, after the golf course immediately north of the neighborhood (in rural unincorporated Snohomish County). the Wellington Hills area is in the northwest corner of the larger Leota neighborhood.

Wellington Hills is a neighborhood of mostly large-lot (0.5 acre to 2-acre lots, zoned R-1), single-family residential homes served by public water and individual on-site septic systems. Many of the homes were built in the 1970s and the 1980s, though some are newer, and a few are older homes. Streets in Wellington Hills are typically paved but without curbs, gutter and sidewalks. Most of the

neighborhood is heavily wooded, with open areas, particularly in the north-central part of the area.

Wellington Hills is bordered on the north by the City limits, which also is the King-Snohomish County line. Across the City line are the golf course and **larger-lot single-family development. To the west, a steep, wooded bluff separates** Wellington Hills from the North Industrial area. To the south and east, Wellington Hills is bordered by other parts of the larger Leota neighborhood. (emphasis added)

An FEIS was prepared for the proposed subdivisions. It contains a "SUMMARY OF IMPACTS, MITIGATION AND SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS" beginning at page 1-9. It notes that:

... All likely impacts could be mitigated by a redesign- by adopted City regulations and/or by elements incorporated into the design of the proposal -- to a level that is considered less than significant. Mitigation, as defined by SEPA, includes actions that can avoid, minimize, rectify, reduce, compensate for or monitor impacts (WAC 197-11-768). **However, some adverse impacts are considered "unavoidable" because they reflect a type of change that is inherent in the proposed development regardless of how it is designed.** Urban development, for example, unavoidably entails clearing of vegetation, creation of impervious surfaces, and conduct of human activities. This category of impacts is identified for each element of the environment in the EIS and is summarized in Section 1.5 below." (emphasis added)

See Appendix G hereto.

The FEIS also identified the following Major Conclusions at 1-44:

- impacts to steep, potentially unstable and erosion prone slopes
- impacts to two wetlands, one on each site
- impacts of urban characteristics in a "rural character" setting
- and to a lesser extent impacts to roadways, with site distance problems

The FEIS also identified "SIGNIFICANT AREAS OF CONTROVERSY AND UNCERTAINTY at page 1-44:

Controversy often arises from technical issues and personal preferences. Wood Trails and Montevallo are no exception. The following are significant areas of controversy surrounding these two proposals.

Although the proposals (i.e., residential plats) are not particularly large or unique in nature, **their location in a low-density neighborhood (generally developed at an average of about 1 dwelling unit per acre) has generated controversy among nearby residents.** The controversy also reflects a more general concern regarding future infill development at urban densities from introduction of sewers. **As of this writing the City has applied a moratorium to new development within the R-1 zones of the City and is conducting a study of sustainable development to help determine future direction for these areas.** The difficulty arises in the balance between urban growth with a city's boundary and maintaining natural environments and a low density zoning with a rural character.

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Major concerns raised by members of the community relate to development compatibility because of differing densities and loss of undeveloped land/open space, and the resulting change in character of the neighborhood. Issues regarding land use, density and neighborhood change are probably the most frequently raised and generate the most controversy. Proposed land uses are of the same type as surrounding development (i.e., single-family residences) and, although the proposed density is higher (4 dwelling units per acre) it is still considered low-density under the City's Comprehensive Plan.

- **Each proposal has direct impacts on the environment, some which could rise to the level of significant adverse.** Erosion hazard areas exist on Wood Trails. **Neighbors, technical experts and the general public differ in their views.** Some contend that the slope are stable and can handle engineering solution, while others believe that slopes of this nature tend to create long-term erosion and stability problems, that are difficult to prevent. The design of the proposal could be altered to minimize many of the potential effects.
- **A debate over urban design standards such as road widths is challenge.** Wider roads create more of a sense of urban character, yet increase impervious area. Narrower roads create amore rural character, but challenge the need for parking and safety on roads.
- **One wetland on each proposal site will be impacted. The one on Wood Trails would be eliminated and replaced with a detention**

facility and the one on Montevallo will potentially be drained. Debate is occurring over these two issues. Removal of the wetland on Wood Trials may be logical for its location for the detention facility. (emphasis added)

No significant uncertainty has been identified by the City in regard to the type or magnitude of impacts that are anticipated, with the exception of the controversy over density. All other issues can be mitigated. The City believes that the impact conclusions provided in the Final EIS are accurate assessments of whether probable, significant adverse impacts would occur, and are consistent with the technical information considered in the environmental review.

In section 1.7 of the FEIS at 1-45, "ISSUES TO BE RESOLVED" the FEIS identified issues unresolved by the EIS and later decided by the City Council in their decisions denying the rezones:

The EIS identifies many issues that will be resolved during City review of the proposal. The major issue regarding the proposals is the compatibility of infill residential development (at 4 dwelling units per acre) with existing lower-density residential development (averaging about 1 dwelling unit per acre), and the acceptability to the community of the change associated with this infill. The City will need to resolve that issue when it considers the proposed rezones. Other issues involve design factors that will be resolved during City review of the subdivision applications, if the rezone and preliminary plat applications are approved. The following table, 1.8-1

provides examples of some issues to be resolved. (emphasis added)

An open record hearing was conducted by a City Hearing Examiner where transportation, compatibility, environmental, need, and other issues were contested. Significant evidence was entered into the record representing the different points of view.

The City Council after receiving a recommendation from its Hearing Examiner to approve the two rezones, determined that infill residential development at four dwelling units per acre was in incompatible with the existing lower density residential development. The Council denied the rezone requests to maintain the current R-1 zoning. This appeal followed.

C. SUMMARY OF ARGUMENT

The City Council as the City's governing legislative body has the discretion to deny a rezone, regardless of how well an applicant may demonstrate compliance with the established common law and local rezone criteria. The courts will affirm the denial of a rezone, so long as there is any rational or reasonable basis to support the denial evident in the record. Under LUPA, the reasoning or rationale of the Council need only be supported by substantial evidence. Here the rational or reasonable basis for the City Council's denial of the rezone is set forth in its extensive

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written findings and conclusions. *See* Appendixes A and B. These findings and conclusions, as further referenced in this brief and in the brief of the concerned Neighbors of Wellington (CNW), are amply supported by the record.

The City Council's findings and conclusions recognize that Phoenix Development, Inc. (Phoenix) failed to demonstrate compliance with both the established common law and local rezone criteria. Specifically, Phoenix failed to:

1.1 Demonstrate a substantial change of circumstances since the original zoning; or to demonstrate a need to rezone the properties in order to implement a change in zoning called out for in the City's Comprehensive Plan; and

1.2 Demonstrate that the proposed rezones bore a substantial relationship to the public health, safety and welfare; and

1.3 Demonstrate a substantial need for the rezone; and

1.4 Demonstrate that the proposed zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.

The current R-1 zoning designation for the subject properties is consistent with the comprehensive plan's future land use map, with the

guidelines for determining the appropriateness of R-1 zoning in WMC 21.04.080(2)(a), and with meeting the City's 20 year planning obligations consistent with the county's buildable lands survey. The City Council's denial of the rezone applications was a reasonable exercise of City Council discretion. A change in zoning for the two properties was determined by the Council to be unnecessary at this time. The validity of this decision is, at minimum, "fairly debatable", and must be sustained under the applicable standard of judicial review.

D. ARGUMENT

1. Standards and Procedures Governing Zoning Law.

a. Courts do not rezone property. City Councils decide whether or not to rezone property.

At its core, Phoenix's argument attempts to characterize the requested rezones as essentially ministerial decisions to which any developer is unequivocally entitled. Contrary to Phoenix's contentions, however, the decision to rezone — or *not* to rezone — a particular parcel falls within the broad, exclusive discretion of the local legislative body. Washington law is clear that "[c]ourts simply do not possess the power to . . . rezone a zoned area[.]" *Teed v. King County*, 36 Wn. App. 635, 644, 677 P.2d 179 (1984). For this reason, courts "cannot and should not invade the legislative arena or intrude upon municipal zoning

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determinations, absent a clear showing of arbitrary, unreasonable, irrational or unlawful zoning action or inaction.” *Id.*

The Woodinville City Council’s unanimous decision to retain the current zoning designation for the Wood Trails and Montevallo project sites in the instant case easily satisfies this deferential standard. After an extensive hearing and review process, the City Council entered detailed findings and conclusions in support of its decision. The Council carefully considered Phoenix’s request under the City’s locally codified rezone standards and ultimately determined that the proposal (1) was inconsistent with relevant comprehensive plan provisions, (2) would be out of character with the surrounding neighborhood, (3) would cause unmitigatable impacts to local transportation systems, and (4) was unnecessary in order to implement relevant City plans, goals, timeframes and policies. These findings and conclusions are demonstrably supported by the administrative record as documented below.

Phoenix seeks reversal of the Woodinville City Council’s decision refusing to rezone the Wood Trails and Montevallo project sites from R-1 to R-4 residential densities. Appellant’s Brief at 4. The crux of Phoenix’s argument in this regard is that “the Wood Trails and Montevallo proposals clearly meet all of the City’s rezone criteria.” Appellant’s Brief at 47. As

explained *infra*, this contention is erroneous in light of the substantial record evidence demonstrating that there have been no changed conditions from the time of the original zoning, no demonstrated need by the city for the increased residential density at this time and in this location, the difference in neighborhood character between R-1 and R-4 density zoning, and the lack of adequate public services to support the increased density (including roads built to current standards, public parks, public transit, and existing public sewer services).

b. The City Council decision to rezone property is inherently discretionary.

It is a basic precept of municipal law that “[z]oning is a *discretionary* exercise of police power by a legislative authority.” *Anderson v. Island County*, 81 Wn.2d 312, 317, 501 P.2d 594 (1972) (emphasis added). For this reason, a local government’s decision regarding a rezone is entitled to deference on review. *See, e.g., Bassani v. Bd. of County Cm’rs for Yakima County*, 70 Wn. App. 389, 393, 853 P2d 945 (1993). “If the validity of the legislative authority’s classification for zoning purposes is fairly debatable, it will be sustained.” *Anderson*, 81 Wn. App. at 317.

This judicial deference results from the unique status of municipal zoning power. Unlike other categories of local land use approvals,

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rezoning is non-delegable, *see* RCW 35A.63.170(2)(c); may be exercised only by the local legislative body of the municipality, *see Southwick, Inc. v. Lacey*, 58 Wn. App. 886, 889, 795 P.2d 712 (1990); must be effected by ordinance, *see* 17 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate: Property Law* §4.16, at 240 (2d ed. 2004); and is not subject to local referendum. *See Leonard v. City of Bothell*, 87 Wn.2d 847, 557 P.2d 1306 (1976). And site-specific rezones are one of the few categories of land use procedures in which applicants are not protected from future regulatory amendments under the “vested rights doctrine”. *See Teed*, 36 Wn. App. at 645.

Washington courts have developed a multi-faceted standard for reviewing local rezone decisions:

(1) there is no presumption favoring the action of rezoning; (2) the proponents of the rezone have the burden of proof in demonstrating that conditions have substantially changed since the original zoning. . . ; and (3) the rezone must bear a substantial relationship to the public health, safety and welfare.

Parkridge v. City of Seattle, 89 Wn.2d 454, 462, 573 P.2d 359 (1978).⁶

⁶ Under current caselaw, proponents of a rezone are no longer required to satisfy the “changed conditions” criterion of the *Parkridge* test if the rezone would implement relevant policies of the municipality’s comprehensive plan. *See Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846, 899 P.2d 1290 (1995).

Courts have occasionally employed the *Parkridge* criteria to reverse local decisions *approving* a rezone proposal. *See, e.g., Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). Significantly, however, no recorded Washington case has ever used them to grant the type relief sought by Phoenix in the present case: overturning a local legislative body's decision to *deny* a requested rezone.

Indeed, Washington courts have repeatedly emphasized precisely the opposite principle — that a municipality cannot be judicially forced to rezone property even where a developer has in fact satisfied the *Parkridge* standards. “The approval or disapproval of a rezone or reclassification of a particular parcel or property is a discretionary legislative act which cannot be compelled[.]” *Teed*, 36 Wn. App. at 642-43. *See also Balser Investments, Inc. v. Snohomish County*, 59 Wn. App. 29, 40, 795 P.2d 753 (1990) (noting that applicant's satisfaction of rezone criterion “certainly did not mandate that a zoning official *must* grant a rezone”) (superseded by statute on other grounds, *Freeburg v. City of Seattle*, 71 Wn. App. 367, 370, 859 P.2d 610 (1993)) (emphasis added).

Phoenix cites *J.L. Storedahl & Sons, Inc. v. Clark County*, 143 Wn. App. 920, 931, 180 P.3d 848 (2008), to establish that site-specific rezone

decisions are quasi-judicial in nature, and therefore, the Council's discretion is limited by legislatively established criteria. In *Storedahl*, the Council was directed to approve a rezone where the Council failed to base its decision, reversing the Hearing Examiner, on the legislatively established criteria for granting rezones set forth in CCC 40.510.030.

Woodinville does not dispute that site-specific rezone requests are quasi-judicial in nature and that the Council must apply the applicable code provisions relating to granting or denying rezone requests in making its decision. In this case, the Council applied WMC 21.44.070 in determining that a zone reclassification should not be granted, and thus, did not run afoul of *Storedahl*. *Storedahl* does not support the proposition that the Council is obligated to grant a rezone, even if the applicant has met the code requirements. If substantial evidence exists demonstrating that the Council could also deny the rezone based on the legislatively established criteria, the Council has discretion to choose, in its legislative capacity, the zoning classification that would best suit the community.

c. Local Authority to impose zoning criteria.

Separate from the *Parkridge* standards discussed above, municipalities may adopt and enforce their own local criteria for zoning map amendments. See, e.g., *Woods v. Kittitas County*, 162 Wn.2d 597,

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174 P.3d 25 (2007); *Henderson v. Kittitas County*, 124 Wn. App. 747, 753, 100 P.3d 842 (2004). The City of Woodinville's standards governing site-specific rezones are codified at WMC 21.44.070. See Appendix F. In addition to demonstrating compliance with the City's Comprehensive Plan, a rezone proponent must establish that:

- (1) There is a demonstrated need for additional zoning as the type proposed.
- (2) The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.
- (3) The property is physically and practically suited for the uses allowed in the proposed zone reclassification.

WMC 21.44.070.⁷

Phoenix contends that the Woodinville City Council misapplied these criteria in denying the Wood Trails and Montevallo rezone proposals. As demonstrated below, however, Phoenix's argument is without merit. The City Council's decisions were based upon substantial record evidence, a commonsensical interpretation of the Woodinville Municipal Code, and a reasonable exercise of its legislative discretion in determining the appropriate location, character and timing of future residential growth within the Woodinville community.

⁷ Phoenix erroneously contends that the purpose statement contained in WMC 21.04.080 is a "rezone criteria". Appellant's Brief at 23.

2. The Woodinville City Council is not bound by the Hearing Examiner's recommendation.

Phoenix places emphasis upon the fact that the Hearing Examiner recommended approval of the Wood Trails and Montevallo rezone proposals. Appellant's Brief at 16, 48. ⁸ But the Hearing Examiner's recommendation to the Woodinville City Council was just that — a mere recommendation. *See* WMC 17.07.030; WMC 21.42.110(2). As the final decision-maker for any rezone proposal, the City Council retained broad latitude to accept or deny the proposed Wood Trails and Montevallo zoning map amendments:

[R]ezoning involves two necessary steps, a recommendation from the local planning commission, 'planning agency', or hearing examiner to the local legislative body and legislative action by that body. The planning commission, etc. must hold at least one public hearing on a proposed rezoning, *Of course, the local legislative body does not have to adopt a rezoning ordinance that is consonant with the planning agency's action; that action is only recommendatory. The legislative body may adopt a different ordinance or may refuse to adopt any ordinance.*

⁸ As noted at page 6, *supra*, the "recommendation" of the City's Planning Department was at best a highly qualified endorsement of the applicant's rezone requests.

17 Stoebeck & Weaver, Washington Practice §4.16, at 240, *supra*, (emphasis added) (internal citation omitted). *See also Tugwell*, 90 Wn. App. at 8.

The Woodinville City Council's refusal to approve the Wood Trails and Montevallo rezone requests was consistent with this well-established discretion. The City Council was not bound by the Hearing Examiner's recommendations, and was instead free to render its own conclusions regarding the extent to which Phoenix's proposals satisfied the zone reclassification criteria codified at WMC 21.44.070.

3. The Woodinville City Council is not collaterally estopped from denying the Wood Trails and Montevallo rezone proposals.
 - a. The Elements for the Test to Establish the Application of Collateral Estoppel Cannot be Met.

Phoenix alleges that it submitted its development applications for the Wood Trails and Montevallo projects at least in part in reliance upon *Hensley v. City of Woodinville*, a 1997 decision of the Central Puget Sound Growth Management Hearings Board (CPSGMHB). Appellant's Brief at 44. Focusing heavily on dicta from the CPSGMHB's *Hensley* decision, Phoenix contends that the Woodinville City Council is collaterally estopped from denying the Wood Trails and Montevallo rezone proposals. Appellant's Brief at 44.

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Hensley involved a challenge to the City's initial Comprehensive Plan. *Hensley v. City of Woodinville*, CPSGMB Case No. 96-3-0031, Final Decision and Order (February 25, 1997), at 1-3. One of the Comprehensive Plan policies challenged in the proceeding was Policy LU-3.6, under which the City would "[a]low densities higher than one dwelling unit per acre only when adequate services and facilities are available to serve the proposed development." *Id.* at 8. Citing previous Growth Board decisions that had imposed a *bright line* GMA standard of four dwelling unit per acre for urban residential density, the CPSGMHB invalidated Policy LU-3.6 as inconsistent with this mandate. *Id.* at 8-9 & n.1 (citing *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039, Final Decision and Order (October 6, 1995), at 50). There was no Growth Board challenge in *Hensley* to the allowance for R-1 residential zoning within the comprehensive plan or to the zoning of the Wellington and Leota neighborhoods as R-1 or to the failure of the City to rezone the properties from R-1 to R-4. The doctrine of collateral estoppel cannot based upon *Hensley* cannot be applied to prevent the City Council from denying the rezones.

The party asserting collateral estoppel bears the burden of proof, *McDaniels v. Carlson*,

108 Wn.2d 299, 303, 738 P.2d 254 (1987), and four requirements must be met:

(1) the issue decided in the prior adjudication must be identical with the one presented in the second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea of collateral estoppel is asserted must have been a party or in privity with a party to the prior litigation; and (4) application of the doctrine must not work an injustice.

Williams, 132 Wn.2d at 253-54 (emphasis added).

State v. Gary, J.E., 99 Wn. App. 258, 262, 991 P.2d 1220 (2000).

Elements (1) and (4) of the test for collateral estoppel cannot be met. As demonstrated above, the issue decided in *Hensley*— i.e., whether or not a City Comprehensive Plan policy prohibiting residential densities higher than R-1 unless adequate services and facilities are available to serve the proposed development — is hardly “identical” to the central issue implicated in the instant LUPA appeal: whether or not specific properties validly zoned R-1 should be rezoned to R-4.⁹ In order for collateral estoppel to apply, “the issue to be precluded must have been actually litigated and necessarily determined in the prior action.” *City of Arlington v. Central Puget Sound Growth Management Hearings Board*,

⁹ WMC 21.04.080(2)(a) and WMC 21.04.080(2)(b) which on their face conflict with the decision in *Hensley*, were not appealed to the Growth Board when adopted by the City Council.
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138 Wn. App. 1, 25, 154 P.3d 936 (2007) (citation omitted). The CPSGH's dicta in *Hensley* regarding urban densities was framed exclusively in the context of a since-repealed Comprehensive Plan provision; the Growth Board did not — and lacked authority to — address the site-specific, quasi-judicial issues implicated by the Wood Trails and Montevallo rezone requests. See, e.g., *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 178-79, 4 P.3d 123 (2000) (GMHB lacks jurisdiction to review site-specific rezone decisions). Because these issues clearly were not “actually litigated and necessarily determined” in *Hensley*, Phoenix's collateral estoppel argument is without merit.

- b. Growth Management Act principles — including the density standard espoused in *Hensley* — are inapplicable in LUPA proceedings.

At its core, Phoenix's estoppel theory — as well as its “sound planning principals” argument — attempts to graft growth management policy principles onto the decisional framework for a site-specific rezone proceeding.¹⁰ Appellant's Brief at 44. A recent Washington Supreme

¹⁰ Phoenix also attempts to graft GMA principles onto the framework for deciding a site-specific rezone request when, at page 25, they argue that parks, roads, and walkways are not “urban services” as defined in the GMA, and therefore, their adequacy should not be considered in the Council's decision. Because *Woods* dismissed the argument that GMA planning requirements could form the basis for reversing a rezone decisions, Phoenix's argument is moot even if their interpretation of the statute defining “urban services” is correct.

Court decision has expressly rejected this approach. In *Woods v. Kittitas County*, the Court reiterated that “a challenge to a site-specific land use decision can only be for violations of the comprehensive plan and/or development regulations[.]” The *Woods* Court explicitly considered and dismissed the argument that GMA planning requirements could form the basis for reversing a local jurisdiction’s rezoning decision, holding that “a site-specific rezone cannot be challenged for compliance with the GMA.” *Id.* at 614 (emphasis added). A superior court lacks subject matter jurisdiction to consider arguments of this type. *Id.* at 615.

c. The urban density standard espoused in *Hensley* has been overruled.

The Growth Board’s dicta in *Hensley* regarding appropriate urban densities under the GMA was based upon the so-called “bright line rule”, a four-unit-per-acre standard developed by the CPSGMHB in prior decisions. *Hensley v. City of Woodinville*, CPSGMB Case No. 96-3-0031, Final Decision and Order (February 25, 1997), at n.1. Critically, however, the bright-line rule — as well as the Growth Board’s authority to impose a numerical density standard under the GMA — was rejected by the Washington Supreme Court in *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 118 P.3d 322 (2005) (internal citation omitted).

The *Viking* decision, recently confirmed *Thurston County v. WWGMHB*, supra, fatally undermines Phoenix's reliance upon *Hensley*.

- d. Phoenix's "reliance" on *Hensley* was a calculated — albeit ultimately unsuccessful — business risk.

Phoenix's decision to submit a combined rezone/preliminary application for the Wood Trails and Montevallo proposals, respectively, was hardly inadvertent. Unlike applications for building permits, preliminary plats and other categories of land use approvals, a rezone application does not "vest" a proponent to the local municipality's current development regulations. See, e.g., *Hale v. Island County*, 88 Wn. App. 764, 771, 946 P.2d 1192 (1997). Washington courts have, however, recognized a limited exception to this rule where a developer simultaneously submits a rezone request together with a preliminary plat application. See, e.g., *Schneider Homes, Inc. v. City of Kent*, 87 Wn. App. 774, 779-80, 942 P.2d 1096 (1997). Phoenix took advantage of this opportunity by making the strategic decision to file the Wood Trails and Montevallo rezone proposals together with the preliminary plat applications for each project. This decision by Phoenix was apparently based upon Phoenix's novel interpretation of WMC 21.04.080(1)(a) i.e.,

that the Woodinville City Council was *required* to upzone the Wood Trails and Montevallo project sites upon demand. But, as explained at length *supra*, both state law and the Woodinville Municipal Code preserved the City Council's discretion to grant or deny these — or any other — rezone proposals. Phoenix's alleged "reliance" under these circumstances was thus objectively unreasonable, as it depended entirely upon an outcome (rezone approval) that was wholly speculative. Estoppel against the City clearly cannot apply to rescue Phoenix from such a self-created hardship.

4. Neither WMC 21.04.080(1)(a) nor any other provision of the Woodinville Municipal Code ("WMC") mandates or requires the City Council to approve an application to up-zone property zoned residential R-1 to residential R-4, even if adequate public services can be provided.
 - a. The provisions of WMC 21.04.080(1) are not part of the rezone criteria adopted by Ordinance of the Woodinville City Council.

WMC 21.44.070 (Appendix I) sets forth the criteria that must be demonstrated should the City Council, in its discretion, decide to grant a rezone application.¹¹ The code section provides as follows:

¹¹ The three criteria are in addition to the well-established law providing that a rezone will be upheld only if there is substantial evidence indicating that conditions have substantially changed since the original zoning; and the rezone must bear a substantial relationship to the public health, safety, morals, or welfare. *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462, 573 P.2d 359 (1978); and *Belchar v. Kitsap County*, 60 Wn. App. 949, 952, 808 P.2d 750 (1991).

21.44.070 Zone reclassification.

A zone reclassification shall be granted only if the applicant demonstrates that the proposal is consistent with the Comprehensive Plan and applicable functional plans at the time the application for such zone reclassification is submitted, and complies with the following criteria:

(1) There is a demonstrated need for the additional zoning as the type proposed.

(2) The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.

(3) The property is practically and physically suited for the uses allowed in the proposed zone reclassification.

(Emphasis added).

There is no reference in WMC 21.44.070 to WMC 21.04.080 (Appendix E) or to any other section of the WMC for additional criteria required to be met in order for a requested zone reclassification to be approved. WMC 21.04.080 — upon which Phoenix strenuously (and selectively) relies — is not designated as rezone criteria, but is instead specifically framed as a mere “*purpose statement*” for the Residential Zones designated in the chapter and on the City zoning map. WMC 21.04.020, the code section immediately proceeding the purpose statements for all city zone designations (including WMC 21.04.080) for residential zones, states as follows:

21.04.020 Zone and map designation purpose.

The purpose statements for each zone and map designation set forth in the following sections shall be used **to guide** the application of the zones and designations to all lands in the City of Woodinville. The purpose statements also **shall guide** interpretation and application of land use regulations within the zones and designations, and any changes to the range of permitted uses within each zone through amendments to this title. (emphasis added)

There is no indication that the purpose statements should be used by the City Council in the making of site specific rezone determinations or that they supplement the rezone criteria specifically set forth in WMC 21.44.070.

WMC 21.04.080(1)(a), is mischaracterized by Phoenix in its Appellate Brief at 23 and 44 as one of two provisions of the WMC which sets forth “rezone criteria,” states in pertinent part (relating to the “low-density zones”) as follows:

21.04.080 Residential

(1) The **purpose** of the Urban Residential zones (R) is to implement Comprehensive Plan goals and policies for housing quality, diversity and affordability, and to efficiently use residential land, public services and energy. These **purposes** are accomplished by:

(a) Providing, in the low-density zones (R-1 through R-4), for

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predominately single-family detached dwelling units. Other development types, such as duplexes and accessory units, are allowed under special circumstances. Developments with densities less than R-4 are allowed only if adequate services¹² cannot be provided;

[subsection (b) R-5 through R-8, subsection (c) R-9 through R-18 and (d) subsection R-9 through R-18 are omitted]

Nothing in this section, including the underlined language relied upon by Phoenix, even remotely indicates that a site specific request to rezone property from R-1 to R-4 *must* be approved if the requestor can demonstrate that “adequate public facilities” exist or can be provided. WMC 21.04.080(1)(a) simply indicates **why** the Leota and Wellington neighborhoods are zoned R-1. Appellant’s argument that WMC 21.04.080(1)(a) must be interpreted to require the City Council to approve the rezones because the Petitioner has included the extension of sewer to the subject properties is a creation of Appellant’s imagination:

¹² “Services” is an undefined term in WMC Chapter 21.06 or in WMC Chapter 21.04. However, Chapter 21.28 (Appendix H) titled “Development Standards - Adequacy of Public Facilities and Services” provides a reasonable basis for the interpretation that services as used in the subject language, means at least those services identified in Chapter 21.28. those services include adequate sewage, water, roads, vehicular access, fire protection, and school concurrency. In addition, the ordinary meaning of the word services is broader than any one single municipal service and would seem to include all municipal service appropriate to an R-4 designation. For example, WMC Chapter 3.36 (Appendix I) requires Park Impact fees to be paid because parks are an essential municipal service. WMC 3.36.110 allows an impact fee credit if the developer actually provides park system improvements with their development.

- Appellant can cite to no statement from City Staff in the entire voluminous hearing record agreeing with this interpretation.
- There is no reference in the entire voluminous hearing record to any previous findings of fact adopted by the City Council approving a rezone from R-1 to R-4, simply because the applicant will extend sewer to the subject property.
- Even the two written recommendations of the City Hearing Examiner so highly praised by Phoenix, fail to recognize any such interpretation.¹³
- b. A Purpose Statement is an Idicia of Legislative Intent and not a Regulatory Requirement.

It is also well settled law that the purpose section of an ordinance or statute cannot be interpreted as setting forth mandatory requirements. Legislative statements of policy and purpose do not give rise to enforceable rights in and of themselves. It is the substantive statutory sections that follow the statement of policy or purpose that provide the

¹³ The Hearing Examiner did interpret the language of WMC 21.04.080(1)(a) differently than the interpretation given by the City Council. That difference in interpretation will be addressed later in this brief.

enforceability of certain rights or obligations. *Judd v. Am. Tel. & Tel. Co.*, 116 Wn. App. 761, 770, 66 P.3d 1102 (2003); and *In re Welfare of J.H.*, 75 Wn. App. 887, 891, 880 P.2d 1030 (1994). The purpose statement of a statute or an ordinance is simply an indicia of legislative intent. *See, e.g., Jeffery v. Weintraub*, 32 Wn. App. 536, 540, 648 P.2d 914 (1982).

5. WMC 21.04.080(2)(a) and WMC 21.04.080(2)(b) provide a rational basis for the City Council to deny the requested rezones.

a. WMC 21.04.080(2)(a)

WMC section 21.04.080(2)(a) makes the following statement of public policy providing a reasonable guideline for the City Council to consider when considering a request to upzone property in an R-1 zone to a higher residential density:

(2) Use of this zone is appropriate in residential areas designated by the Comprehensive Plan as follows:

(a) The R-1 zone on or adjacent to lands with area-wide environmental constraints, or in well-established subdivisions of the same density, which are served at the time of development by public or private facilities and services adequate to support planned densities;

The Wellington and Leota neighborhoods are both older, well-established neighborhoods with subdivisions of R-1 density.¹⁴ They are both located within an area designated for “Low Density” Residential Zoning by the Comprehensive Plan. They are served by both public and private services that were adequate at the time of development, but are arguably deficient in some respects (roads, pedestrian facilities, parks, and transit) by today’s standards. These recognized deficiencies required significant mitigation measures to be required in the FEIS for the R-4 rezone alternative. The Wellington neighborhood is also arguably environmentally constrained by steep slopes. The Council recognized these circumstances in its finding of fact number 6 in both rezone decisions. Finding 6 provides a rational basis for denial of the rezones. The current R-1 zoning is appropriate for the area in which the subject properties are located due to:

- Well established subdivisions of the same density; and
- Public and private services adequate for R-1 development;
and
- In the case of the property proposed for the Wood Trails subdivision, the lands are adjacent to lands with

¹⁴ See Statement of the Case.
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environmental constraints.¹⁵

The findings are supported amply in the hearing record.¹⁶

b. WMC 212.04.080(2)(b).

(b) The R-4 through R-8 zones [are appropriate] on urban lands that are predominantly environmentally unconstrained and are served at the time of development, by adequate public sewers, water supply, roads and other needed public facilities and services; and

City Council finding 6 recognizes that neither of the proposed rezone sites is currently served by adequate public sewers or roads and that other needed public facilities and services such as parks and transit are not currently present nor would they be present at the time of the proposed development of either the Wood Trails or Montevallo subdivisions. Public sewers would be required before R-4 development took place, but parks, transit, and roads built to current standards are not proposed in the subdivision proposals to be provided at the time of the proposed development of the properties. An R-4 zone classification is not appropriate for the subject properties at this time. The City Council's

¹⁵ It is arguable based on the record whether or not mitigation measures adequately mitigate the adverse environmental effects of R-4 development on the steep slopes, however, it is not arguable that the steep slopes present environmental constraints.

¹⁶ See Statement of the Case and the Briefing and Exhibits cited by CNW.

denial of the rezone applications is consistent with a reasonable interpretation and application of RCW 21.04.080(2)(b).

6. There has been no substantial change of circumstances since the original zoning of the property to R-1.
 - a. The Facts fail to Demonstrate Changed Circumstances.

The City Council found that there were had been no significant changed circumstances since the original zoning to justify the rezone requests. Council Findings #6.e. and f. Neighboring residential properties were still zoned R-1. Neighborhood sentiment had not changed to support higher density zoning. Sewer was still not extended, although Phoenix proposed to extend sewer from an existing mainline extending through the industrial area at the bottom of the steep slopes on the west end of the Wood Trails property. The mainline has been present and available for connection for a number of years. The roads servicing the area were identified as "sub-standard." by the FEIS. The City has not yet made infrastructure improvements to these neighborhoods. There were still no neighborhood parks. See Hearing Examiner Preliminary Plat Finding #14. The area was not yet served by public transit. See Hearing Examiner Preliminary Plat Finding #15. Changed circumstances must be demonstrated by a rezone proponent for a rezone to be lawful. *Parkridge* {KNE706526.DOC;3/00046.050035/}

v. *City of Seattle, supra* at 462. Before the Hearing Examiner and before the City Council, Petitioner argued that “changed circumstances” had been demonstrated because the Petitioner would bring sewer to the properties when it developed the two proposed subdivisions. What the Petitioner might do in the future does not satisfy the requirement that changed circumstances exist at the time of the rezone determination. A rezone of the properties does not guarantee Petitioner would ever build his proposed developments or extend sewer. The same is true for parks. Neighborhood parks have not been developed in this area to accommodate higher residential densities. The election by Phoenix as part of its preliminary plat applications to pay a parks impact fee instead of developing park and recreation land for the residents of the proposed developments does not ensure parks would be developed in the neighborhoods at any time in the foreseeable future.

b. A Rezone to R-4 is not Directed by the Comprehensive Plan or Necessary to Implement a Change in the Comprehensive Plan Since the Original Zoning.

Phoenix argues to this court that “... by virtue of implementing the policies of the Comprehensive Plan, the proposed rezones met any applicable ‘changed circumstances’ requirement,” citing *SORE v. Snohomish County*, 99 Wn.2d 363, 662 P.2d 816 (1983), and Finding No.

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6 of the City Council's two decisions. Appellant's Brief at 39. Finding 6, however, simply indicates that "the proposed rezone is arguably consistent with several policies of the City's Comprehensive Plan." Phoenix fails to identify any specific direction in the Comprehensive Plan to zone the subject properties as R-4.

The cases cited by Phoenix do not support its argument or a rezone on the record facts. In *SORE v. Snohomish County*, the proposed rezone was necessary to implement changes made in a Comprehensive Plan calling for new industrial development. Likewise in *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 845, 899 P.2d 1299 (1995) where the comprehensive plan at issue specifically provided for a future regional shopping center at the subject property, a substantial change of circumstances was not required to be demonstrated because the rezone implemented a specific direction in the comprehensive plan. There has been no changes to the Woodinville Comprehensive Plan calling for a change in the density of the residential zoning in the Leota and Wellington neighborhoods at this time. A change would in fact conflict with comprehensive plan policies discouraging more dense zoning before public services deemed adequate by the City Council have been provided

in the neighborhoods. *See* Comprehensive Plan Policies LU-1.2, and LU-1.3. *See* Appendix C.

7. There is substantial evidence in the hearing record supporting the City Council's finding that there is no demonstrated need for the rezone.
 - a. The current "needs" of the City of Woodinville do not include R-4 Residential Development at the locations proposed for the rezones.

The Hearing Examiner made the conclusion on both rezone applications that the "need" criterion codified at WMC 21.44.070(1) has been met based on the fact that the City has 30% of its zoning in R-1 and only 2.7% of its zoning in R-4.¹⁷ Here, Phoenix argues the need criterion is met because of the demonstrated market demand for new R-4 housing units. The City Council disagreed with both the examiner and Phoenix on this criterion.

The City Council found that the comprehensive plan goal for diverse housing was being met by a multiple range of residential zoning designations in the City.¹⁸ In addition, City Council findings 11 through

¹⁷ See Hearing Examiner's Conclusions on Rezone Application, number 2.A. for both applications.

¹⁸ City Council finding number 8 states: "The City of Woodinville currently has a diversity of housing within the R-1, R-4, R-6, R-12, R-48, and TB and Central Business District (CBD zoning designations that allow for a wide variety of housing types, incomes and living conditions.

21 demonstrate not only that there is no need for the requested zone changes to meet the City's planning goals or required 20 year housing planning, but also that the rezones — if approved — would conflict with City policies discouraging development ahead of the appropriate public infrastructure needed to support the development, and would provide undesired competition with planning policies prioritizing residential growth in the City's downtown where the appropriate infrastructure capacity and services exist without the need for mitigation. See Comprehensive Plan Goals LU-1 and LU-2 and the policies thereunder at Appendix K.

The “market demand” theory advanced by Phoenix has not been adopted by Washington law. The out-of-state cases cited by Phoenix to support its argument have no basis in Washington law. The cases interpret statutes and case law from other states. “Need” is defined by City policy¹⁹ and objectives, not by the dictionary or by a market study convincing a developer that it can profit from a development requiring a rezone for construction. Following Phoenix's argument to its logical conclusion, all a developer needs to do is come to City Hall with a market study to establish

¹⁹ See for example land use Goal LU-3: To attain a wide range of residential patterns, densities, and site designs consistent with Woodinville's identified needs and preferences. (emphasis added)

need for the rezone. The determination of “need” is within the police power of a City Council. It is within the police power of the City Council to determine where in the City the different densities of residential development should occur, as well as the timing of such development. It is within the police power of the City Council to determine that it wants to encourage residential development in the City downtown area before encouraging more dense residential development in the Leota and Wellington Hills neighborhoods. See *Hernandez v. City of Hanford*, 41 Cal.4th 279, 159 P.3d 33 (2007) for a good discussion and analysis of this issue, since we’re looking at out of state cases. Appendix J.

The determination of need is within the discretion of the City Council by interpreting and applying adopted City policies and priorities, not a market study. See footnote 9.

8. There is substantial evidence in the hearing record supporting the City Council’s finding that a site specific rezone of the property to R-4 density does not bear a substantial relationship to the public health, safety, and welfare.

The City Council’s “conclusions” demonstrate why the Council’s discretion to determine that the proposed rezones do not promote the public health, safety, and welfare. It is for the City Council to determine, in its discretion, how its Comprehensive Plan Goals and Policies are best

met and interpreted. Although arguably, the City Council could have concluded, as did the Hearing Examiner, that the Phoenix proposals are “reasonably compliant with the Woodinville Comprehensive Plan” it did not do so. Its reasons are supported by its findings and the comprehensive plan as extensively explained by CNW in its briefing.

9. There is substantial evidence in the hearing record supporting the City Council’s finding that the zone reclassification is inconsistent and incompatible with the uses and zoning of the surrounding properties

As noted in the excerpts from the EIS in Appendix F and quoted in Section III of this brief, compatibility of R-4 residential density developments with the existing large lot residential uses was identified as an issue in controversy that would require eventual resolution by the City Council. Although both R-1 and R-4 densities were identified in the Comprehensive Plan as “low density” residential zones, the FEIS identified impacts from R-4 development either not present or less severe with R-1 development. Compatibility issues are addressed by CNW in its briefing and will not be analyzed in great detail here. However, the Council’s finding 12 is that the proposed R-4 developments are not in character with the surrounding R-1 and neighborhoods and properties.

Phoenix argues compatibility of character on the basis that both densities are low density residential zones under the comprehensive plan. Appellant's Brief at 46. R-1 is at the bottom and R-4 is the highest "low density" residential zone. However, Phoenix itself recognizes the significant differences between R-1 and R-4 residential zoning based upon all of the planning articles and argument Phoenix includes in its brief explaining why R-1 is inappropriate zoning. Phoenix is sounding like the Seattle Super Sonics in their quest to move to Oklahoma, by talking out of both sides of its mouth. Phoenix says R-4 development is compatible with the R-1 uses for purposes of meeting the rezone criteria, but also extensively argues that R-1 is not consistent with urban zoning while R-4 is consistent with urban zoning, for purposes of good land use planning and meeting the goals of GMA.

The City Council has the discretion to determine that R-4 residential development at the proposed sites is out of character with the large lot residential uses currently in the Leota and Wellington Hills neighborhoods. City Land Use Goal LU-1 is: "To guide the City's population growth in a manner that maintains or improves Woodinville's quality of life, environmental attributes, and Northwest woodland character." Policy LU-1.1 states: "Preserve the character of existing

neighborhoods in Woodinville while accommodating the state's 20-year growth forecasts for Woodinville."

10. Finding #6 in both rezone decisions is not "unlawful."

Finding # 6 begins as follows:

6. **In its legislative capacity, the City Council finds that he current zoning designation of R-1 is appropriate.** The R-1 designation is appropriately placed upon the property in consideration of: (bold emphasis added)

Although the closed record review performed by the City Council was a quasi-judicial proceeding requiring procedural due process and subject to the appearance of fairness doctrine, **the decision to rezone property is a discretionary act of the City Council.** *Teed v. King County*, 36 Wn. App. 635, 642, 677 P.2d 179 (1984). "The city council cannot be compelled to pass a rezoning ordinance, however fair, reasonable, and desirable it may be, as that represents **an exercise of legislative discretion.**" *Besselman v. Moses Lake*, 46 Wn.2d 279, 280, 280 P.2d 689 (1955) citing *State ex re. Ogden v. Bellevue*, 45 Wn.2d 492, 275 P.2d 899 (1954). Due to the legislative nature of a rezone decision, **a rezone is the one land use development approval that cannot be delegated by a city council to a hearing examiner.** RCW 35A.63.170. See *Lutz v. Longview*, 83 Wn.2d 566, 570, 520 P.2d 1374 (1974); *Zehring*

{KNE706526.DOC;3/00046.050035/}

v. Bellevue, 103 Wn.2d 588, 591, 694 P.2d 638 (1985); and *Southwick, Inc. v. Lacey*, 58 Wn. App. 886, 889, 795 P.2d 712 (1990).

The courts do not possess the power to amend the zoning regulations. It is reasoned that the power to amend a zoning ordinance is **legislative in character**, and that it cannot be exercised by the courts where a denial of an application to rezone is discriminatory. ... (emphasis added)

Anderson's Am Law of Zoning, §4.27 (4th Ed).

The power of a municipal legislative body to amend the zoning regulations is legislative in character Anderson's Law of Zoning, §4.29 (4th Ed).

Finding of Fact #6 simply recognizes that the City Council was exercising its discretion as the legislative body of the City to deny the rezone. The argument appearing in Appellant's Brief at 47 is without merit.

Appellant's reliance upon *Storedahl* is misguided. As stated *supra* in Section 1(b), Woodinville's Council did not run afoul of *Storedahl* because it did not adopt new legislative policy, as alleged in Appellant's Brief at page 47. Rather, the Council applied the legislatively established criteria in WMC 21.44.070 in making the rezone decision, including consideration of demonstrated need, compatibility and consistency with

{KNE706526.DOC;3/00046.050035/}

surrounding uses, and practical and physical suitability of the land for the proposed zone reclassification. Finding that substantial evidence in the record existed to conclude the Appellant's proposed rezone did not meet those criteria, the Council acted within its legislative discretion to deny the rezone.

11. Phoenix can develop the subject properties with R-1 subdivisions.

Significantly, *there is no evidence in the record suggesting — much less conclusively demonstrating — that Phoenix ever attempted to submit an application to develop the Wood Trails and Montevallo project sites at the R-1 densities currently designated by the City's zoning code.* As recognized in the EIS, R-1 development is an alternative to the R-4 rezone and development proposed by Phoenix. Although Phoenix did not argue such in their Appellate Brief, the Hearing Examiner concluded that WMC 21.04.080(1)(a) “stated that this property could not be developed as R-1 because utilities are available.” The Hearing Examiner's conclusion is in error. First, as previously noted above, WMC 21.04.080(1)(a) is not a regulatory provision. In addition, the properties are clearly zoned R-1 on the City zoning map. Under the Residential Land Use Table at WMC 21.08.030 single detached residences are a permitted use in an R-1 zone.

Under the table for densities in WMC 21.12.030 the base density for an R-1 zone is 1 dwelling unit per acre. It is impossible to harmonize the interpretation of WMC 21.04.080(1)(a) made by the Hearing Examiner with the properties R-1 zoning designations and the uses allowed for properties designated R-1 in the Land Use Tables. WMC 21.02.060 titled "Interpretation - General" is applicable. It provides that in cases of inconsistency or conflict, regulations specific to a particular land use supersede regulations of a general application. The regulations in the land use tables are specific to the R-1 zone and clearly permit R-1 development on the properties. See Appendix E.

E. CONCLUSION

The decisions of the City Council should be sustained and the appeals dismissed.²⁰

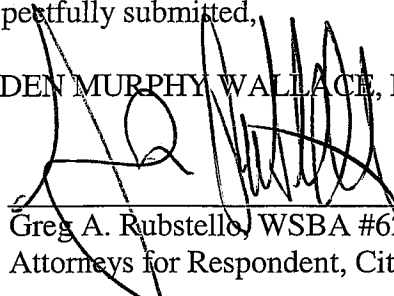
Appellant appeals the decisions denying both the rezones and the preliminary subdivision applications for its projects. The City Council reversed the Hearing Examiner and denied the preliminary plat applications due to its decisions to deny the rezones. Since the Hearing Examiner's approval of the preliminary plats was contingent upon approval of the rezones, it was unnecessary for the Council to make additional findings regarding the arguments made by the Concerned Neighbors of Wellington in support of their appeal of the approval of the preliminary plat applications by the Hearing Examiner. In the event the Court reverses the City Council on the rezone denials, it would be appropriate for the Court to remand with instruction to the Council reconsider its decision on the preliminary plat applications, as well as the rezone applications, considering all of the claims of error raised by CNW in its appeal. Here, the City's Response Brief address only the arguments in the Opening Brief concerning the rezone decision.

RESPECTFULLY SUBMITTED this 10th day of December,
2008.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By



Greg A. Rubstello, WSBA #6271

Attorneys for Respondent, City Of Woodinville

Appendix A

City Council Decision Re: Wood Trails

Appendix A

**BEFORE THE CITY COUNCIL OF
THE CITY OF WOODINVILLE**

In the Matter of the Hearing Examiner's:)
Rezone Recommendation and Preliminary Plat)
Approval for the "Wood Trails" Development)

Appeal Application No: APP2007-0002 Wood Trails

**FINDINGS, CONCLUSIONS, AND DECISION UPON
CLOSED RECORD REVIEW**

SUMMARY OF DECISION

The City Council, of the City of Woodinville, denies the requested Rezone Application (ZMA2004053) recommended by the City Hearing Examiner and Grants the Appeal of the Concerned Neighbors of Wellington (CNW) of the Hearing Examiner's approval of the Preliminary Plat Application (PPA2004054) based solely upon the denial of the Rezone. Since the Hearing Examiner's approval of the Preliminary Plat Application was contingent upon the approval of the rezone, the City Council does not reach the merits of the other claims of error raised by the CNW in their appeal of the Hearing Examiner's Approval of the Preliminary Plat Application.

SUMMARY OF RECORD AND PROCEDURAL MATTERS

Closed Record Review:

A closed record review of the Hearing Examiner's recommendation of May 16, 2007 to approve the requested rezone and of the Hearing Examiner's decision to approve the Preliminary Plat Application based on the appeal of the CNW was held by the City Council on August 6 and August 13, 2007. Oral argument was heard from the Applicant Phoenix Development, Appellant CNW, and other parties of record. No new evidence was received by the City Council. Exhibits received and considered by the Hearing Examiner as well as the video/audio recordings of the open record hearing before the Hearing Examiner were provided to and reviewed by the City Council Members prior to the August 6, 2007 public meeting.

FINDINGS OF FACT

1. The following "General Findings" made by the Hearing Examiner are adopted and incorporated by reference herein: 1, 2, 3, 4, 5, and 7.
2. The following "Findings Related To The Rezone" made by the Hearing Examiner are adopted and incorporated by reference herein: 8, 9, 10, 11, 12, 13, 14, 15, and 16.
3. The subject site is currently zoned R-1 and has been zoned R-1 since incorporation of the City. The zoning designation was at the time of incorporation a continuation of the applicable King County zoning designation under which the land had been subdivided and developed as part of unincorporated King County. City development regulations allow the property to be

developed consistent with its R-1 designation. There is nothing in the record to indicate that the Applicant attempted to develop the property under its current R-1 zoning designation.

4. The R-1 zoning is consistent with the "Low Density Residential" land use designation described in the City's Comprehensive Plan and the land use designation for the area in which the subject site is located on the Future Land Use Map made part of the City's Comprehensive Plan.

5. It is not necessary to rezone the property in order to provide consistency with the City's Comprehensive Plan. Current property zoning is consistent with the City's Comprehensive Plan.

6. In its legislative capacity, the City Council finds that the current zoning designation of R-1 is appropriate. The R-1 designation is appropriately placed upon the property in consideration of:

- a. The development history of the area in which the property is located.
- b. The maintenance of the existing suburban neighborhood character.
- c. The lack of adequate public facilities and services to support the proposed R-4 development, including, but not limited to the substandard arterial roads and pedestrian walkways providing access to and from the subject property, the absence of any City parklands within walking distance of the subject property, and the absence of public transit services servicing the neighborhood area. Developments with R-4 densities are inappropriate in areas of the City where adequate public facilities and services cannot be provided at the time of development. See the statement of purpose in WMC Section 21.04.080(1)(a).
- d. Area-wide environmental constraints imposed by steep slopes and erosion hazard areas make R-1 zoning particularly appropriate for the site by minimizing the significant unavoidable adverse impacts of residential development of the property. See the statement of purpose in WMC Section 21.04.080(2)(a) and (b).
- e. The absence of any substantial changes in the circumstances from which the original zoning determination was made, including, but not limited to land use patterns, public opinion, established neighborhood character, substandard roadways, the absence of stores, sidewalks, and community parks.¹ Public sewer has not been brought to the property, but the Applicant for the rezone has proposed bringing public sewer to the property in its preliminary plat application. The Applicant would connect to public sewer at locations that have existed and been available for sewer connection since the mid 1990's.
- f. Although the proposed rezone is arguably consistent with several policies of the City's Comprehensive Plan, a change in the zoning at the subject site is not needed or necessary to fulfill the City's Comprehensive Plan or to implement the Land Use Element of the Plan.² The Council does not construe its Comprehensive Plan or development regulations as requiring a rezone of this type.
- g. The well established R-1 subdivisions of the same R-1 density served by public and private facilities and services inadequate to support the planned R-4 densities. See the statement of purpose in WMC Section 21.04.080(2)(a) and (b).

¹ Although the issue of whether or not there were changed circumstances to support a rezone was in dispute, the Council notes that the Hearing Examiner made no specific finding on this issue.

² Although the issue of whether or not the rezone was needed to fulfill the comprehensive plan was in dispute, the Council notes that the Hearing Examiner made no finding on this issue. The Hearing Examiner found only that the proposed rezone was "generally compliant" with the comprehensive plan.

7. Specific growth targets have been set for the City of Woodinville to meet by 2022 by King County consistent with the Growth Management Act (GMA) RCW 36.70A and the City of Woodinville is on track to meet these targets. It is not necessary for the City of Woodinville to approve of the Wood Trails development to meet these growth targets. Although the Applicant disputes the accuracy of the City staff's numbers, the Applicant has not demonstrated that the City is not on track to meet its targets.
8. The City of Woodinville currently has a diversity of housing within the R-1, R-4 R-6 R-12, R-24, R-48 and Central Business District (CBD) zoning designations that allow for a wide variety of housing types, incomes and living situations.
9. The Woodinville Municipal Code (WMC) Critical Areas Ordinance mapping showed evidence of area-wide environmental constraints as evidence in the FEIS and exhibits.
10. The FEIS completed by the City of Woodinville shows evidence of area-wide environmental constraints. See exhibit for steep slopes. See exhibit for wetlands.
11. The FEIS completed by the City of Woodinville shows that the Wood Trails development identifies unavoidable adverse impacts to transportation systems of the city and in the neighborhoods the development is set within. The impacts can be avoided by denial of the rezone. Reliance upon disputed mitigation measures and the safe driving habits of future residents of higher density developments is unwise and not in the public interest.
12. The Wood Trails Development as proposed is not in character with the surrounding R-1 neighborhoods and properties.
13. The City of Woodinville must ensure that its capital investments carry out the goals and objectives of the comprehensive plan in a manner which is consistent with the Land Use Element, Capital Facilities Element, and Transportation Element of the plan.
14. The "need" criterion under WMC 21.44.070 ultimately requires an objective judgment by the City Council based upon plans, goals, policies and timeframes. The Council finds that the proposed rezone is not "needed" at this time.
15. While some Comprehensive Plan and code provisions can be construed as supporting further R-4 development within the low density residential areas of the City, the extent, character and timing of any such development is not indelibly predetermined.
16. The City Council has identified key priorities for planning growth and infrastructure investment in the Comprehensive Plan under a number of different elements as well as in the Municipal Code, the Capital Improvement Plan (CIP) and City's budget so that near-term and long-term growth proceeds as a coordinated, time efficient and cost effective investment process.
17. The Comprehensive Plan has a twenty year planning horizon and the City Council recognized that funding constraints require a need for prioritization of actions. As a result, the City Council selected the downtown area for its focus for growth and infrastructure requirements because the downtown has the existing infrastructure capacity and services readily available where the City could achieve many of its GMA goals for housing, employment, and economic

development and transportation improvements. This is precisely what the Growth Management Act, Vision 2020 and the King County-wide planning policies are asking cities to do: to guide development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

18. King County countywide policies call for contiguous and orderly development within Urban Growth Areas and the provision for urban services to such development.

19. Chapter III Land Use Pattern of the County's Countywide Planning Policies describes policies relating to land use and development. Relevant land use (LU) policies are summarized as follows. Urban areas (which includes all of the City of Woodinville) are designated to accommodate a majority of future growth and at least the 20-year projection of population and employment growth (LU-25a & LU-26). Within Urban Areas, growth should first be directed to centers and urbanized areas with existing infrastructure capacity (LU-28). Growth phasing plans for the next 10 to 20 years are required and shall be based on locally adopted definitions, service levels, and financing commitments (LU-29). Chapter III also includes a statement that phased growth is required to promote efficient use of the land, add certainty to infrastructure planning and to insure that urban services can be provided to urban development.

20. The Growth Management Act urban growth goal states: "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner".

21. Vision 2020, a long-range growth and transportation strategy for Puget Sound Region, provides the following relevant policies. Concentrate development in urban areas to conserve agricultural, forest, and environmental resources. Within urban growth areas, promote growth into centers that are connected by an efficient, transit-oriented, multi-modal transportation system (RF-1). Develop a transportation system that emphasizes accessibility, includes a variety of mobility options, and enables the efficient movement of people, goods, and freight (RF-4). The proposed rezone runs contrary to this strategy.

22. The City Council decision to focus planning and growth in the downtown provided the context within short-term capital planning could be done and subsequent decisions made with a view to a longer planning horizon.

24. The City Council has given priority to capital improvements that: (1) protect the public health and safety; (2) have a positive impact on the operating budget through reduced expenditures; (3) correct existing deficiencies or maintain existing levels of service adopted in the Comprehensive Plan; and (4) provide critical City services such as police, surface water and transportation.

25. The City is not yet prepared to commit capital resources to the subject area in the near-term. Committing the City to prematurely construct infrastructure and provide services to this area will become increasingly problematic, resulting in an increasing inefficiency of services thereby lessening the economic gain and placing a growing strain on the fiscal resources of the community.

20 year list of transportation needs. Because of the scope, nature size and costs of these needs and because the sources of funding are limited relative to the cost of improvements, the City has focused its investment on major traffic chokepoints in and around downtown.

26. The City has provided over \$100,000 in funding to an ongoing sustainable development study, referenced in Ordinance 431 that will answer significant questions related to land use in the City that should be available to the City Council before additional rezones in the R-1 areas of the City are approved. See also the City Staff Report references to the study.

27. Preliminary plat approval is contingent upon approval of the requested rezone.

CONCLUSIONS

1. In its quasi-judicial capacity, the City Council finds that, a site specific rezone of the property to R-4 density would be inconsistent with significant Comprehensive Plan Policies and does not bear a substantial relationship to the public health, safety, morals or welfare.
2. Approval of the proposed rezone is inappropriate at this time due to the deficient public facilities and services (other than sewer) in the area where the property is located and the currently ongoing sustainable development study
3. The proposed rezone, and the anticipated higher density development that would result, does not meet the City Council's key priorities identified for planning growth and infrastructure investment in the Comprehensive Plan under a number of different elements as well as in the Municipal Code, the Capital Improvement Plan (CIP) and City's budget so that near-term and long-term growth proceeds as a coordinated, time efficient and cost effective investment process.
4. The City Council selected the downtown area for its focus for growth and infrastructure requirements because the downtown has the existing infrastructure capacity and services readily available where the City could achieve many of its GMA goals for housing, employment, and economic development and transportation improvements. The proposed rezone, as outlined, does not further the City's goals and objective in this regard which is to guide development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
5. The rezone is inconsistent with the City's strategy to meet its regional growth objective. The City has chosen to meet the growth objective in the CBD while insuring that new growth in other areas of the City does not negatively impact the City's transportation land use and capital facilities goals and objectives. RCW 36.70A directs growth as follows: growth should first be directed to centers and urbanized areas with existing infrastructure capacity (consistent with LU-28 County-wide planning policy). Growth phasing plans for the next 10 to 20 years are required and shall be based on locally adopted definitions, service levels, and financing commitments (LU-29). Chapter III also includes a statement that phased growth is required to promote efficient use of the land, add certainty to infrastructure planning and to insure that urban services can be provided to urban development.

6. The City of Woodinville planning approach is complying with GMA requirements. According to past King County Buildable Lands Reports and the preliminary 2007 report, the City has excess capacity to accommodate its GMA housing allocation and is also meeting its employment growth target. The City is providing and supporting affordable housing for the Eastside through its participation in a coalition of east King County cities (ARCH). The City of Woodinville Capital Facilities planning and CIP are addressing the City's infrastructure deficiencies and commits the City to extending infrastructure and services to support urban development with the intent of maximizing the benefit from capital projects relative to costs and resources and in an efficient manner.

7. While new development creates impacts upon public facilities and is required to pay its fair share of costs associated with those impacts, it does little in the way of correcting existing deficiencies within the context of the CIP and the overall capacity of the City to provide for infrastructure needs and services. The City has a 20 year list of transportation needs. Because of the scope, nature, size, and costs of these needs and because the sources of funding are limited relative to the cost of improvements, the City has focused its investment on major traffic chokepoints in and around downtown.

8. Planning is critical to assist a city in its evolution. Given the location of the City, the Council objective is to effectively and comprehensively think and plan in a manner consistent with sound regional planning. The City must proactively direct development to occur in appropriate locations and concurrent with the availability and provision of adequate public facilities and services. Planning comprehensively ensures the integrity of the City's growth strategy. Development which the City cannot readily and efficiently provide services to is clearly premature and is not consistent with the City of Woodinville Comprehensive Plan.

9. The current underlying zoning of the property at R-1 is inconsistent with the proposed density of the preliminary plat application.

DECISION

BASED UPON THE PRECEDING FINDINGS OF FACT AND CONCLUSIONS, THE CITY COUNCIL THEREFORE DENIES REZONE APPLICATION ZMA2004094 AND REVERSES THE HEARING EXAMINER'S APPROVAL OF THE PRELIMINARY PLAT APPLICATION PPA2004093 FOR THE PROPOSED "MONTEVALLO SUBDIVISION."

APPROVED AND ADOPTED BY THE WOODINVILLE CITY COUNCIL this 20th Day of August, 2007.

Appendix B

City Council Decision Re Montevallo

Appendix B

**BEFORE THE CITY COUNCIL OF
THE CITY OF WOODINVILLE**

In the Matter of the Hearing Examiner's:)
Rezone Recommendation and Preliminary Plat)
Approval for the "Montevillo" Development)

Appeal Application No: APP2007-0001 Montevillo

**FINDINGS, CONCLUSIONS, AND DECISION UPON
CLOSED RECORD REVIEW**

SUMMARY OF DECISION

The City Council, of the City of Woodinville, denies the requested Rezone Application (ZMA2004094) recommended by the City Hearing Examiner and Grants the Appeal of the Concerned Neighbors of Wellington (CNW) of the Hearing Examiner's approval of the Preliminary Plat Application (PPA2004093) based solely upon the denial of the Rezone. Since the Hearing Examiner's approval of the Preliminary Plat Application was contingent upon the approval of the rezone, the City Council does not reach the merits of the other claims of error raised by the CNW in their appeal of the Hearing Examiner's Approval of the Preliminary Plat Application.

SUMMARY OF RECORD AND PROCEDURAL MATTERS

Closed Record Review:

A closed record review of the Hearing Examiner's recommendation of May 16, 2007 to approve the requested rezone and of the Hearing Examiner's decision to approve the Preliminary Plat Application based on the appeal of the CNW was held by the City Council on August 6 and August 13, 2007. Oral argument was heard from the Applicant Phoenix Development, Appellant CNW, and other parties of record. No new evidence was received by the City Council. Exhibits received and considered by the Hearing Examiner as well as the video/audio recordings of the open record hearing before the Hearing Examiner were provided to and reviewed by the City Council Members prior to the August 6, 2007 public meeting.

FINDINGS OF FACT

1. The following "General Findings" made by the Hearing Examiner are adopted and incorporated by reference herein: 1, 2, 3, 4, and 6.
2. The following "Findings Related To The Rezone" made by the Hearing Examiner are adopted and incorporated by reference herein: 9, 11, 12, 13, 14, and 15.
3. The subject site is currently zoned R-1 and has been zoned R-1 since incorporation of the City. The zoning designation was at the time of incorporation a continuation of the applicable King County zoning designation under which the land had been subdivided and developed as part of unincorporated King County. Although the property can currently be

developed under the R-1 zoning designation as provided in the specific language of the WMC there is nothing in the record to indicate the Applicant ever sought preliminary plat or other development approval consistent with the current R-1 zoning.

4. The R-1 zoning is consistent with the "Low Density Residential" land use designation described in the City's Comprehensive Plan and the land use designation for the area in which the subject site is located on the Future Land Use Map made part of the City's Comprehensive Plan.

5. It is not necessary to rezone the property in order to provide consistency with the City's Comprehensive Plan. Current property zoning is consistent with the City's Comprehensive Plan.

6. In its legislative capacity, the City Council finds that the current zoning designation of R-1 is appropriate. The R-1 designation is appropriately placed upon the property in consideration of:

a. The development history of the area in which the property is located.
b. The maintenance of the existing suburban neighborhood character.
c. The lack of adequate public facilities and services to support the proposed R-4 development, including, but not limited to the substandard arterial roads and pedestrian walkways providing access to and from the subject property, the absence of any City parklands within walking distance of the subject property, and the absence of public transit services servicing the neighborhood area. Developments with R-4 densities are inappropriate in areas of the City where adequate public facilities and services cannot be provided at the time of development. See the statement of purpose in WMC Section 21.04.080(1)(a).

d. The absence of any substantial changes in the circumstances from which the original zoning determination was made, including, but not limited to land use patterns, public opinion, established neighborhood character, substandard roadways, the absence of stores, sidewalks, and community parks.¹ Public sewer has not been brought to the property, but the Applicant for the rezone has proposed bringing public sewer to the property in its preliminary plat application. The Applicant would connect to public sewer at locations that have existed and been available for sewer connection since the mid 1990's.

e. Although the proposed rezone is arguably consistent with several policies of the City's Comprehensive Plan, a change in the zoning at the subject site is not needed or necessary to fulfill the City's Comprehensive Plan or to implement the Land Use Element of the Plan.²

f. The well established R-1 subdivisions of the same R-1 density served by public and private facilities and services inadequate to support the planned R-4 densities. See the statement of purpose in WMC Section 21.04.080(2)(a) and (b).

7. Specific growth targets have been set for the City of Woodinville to meet by 2022 by King County consistent with the Growth Management Act (GMA) RCW 36.70A and the City of Woodinville is on track to meet these targets. It is not necessary for the City of

¹ Although the issue of whether or not there were changed circumstances to support a rezone was in dispute, the Council notes that the Hearing Examiner made no specific finding on this issue.

² Although the issue of whether or not the rezone was needed to fulfill the comprehensive plan was in dispute, the Council notes that the Hearing Examiner made no finding on this issue. The Hearing Examiner found only that the proposed rezone was "generally compliant" with the comprehensive plan.

Woodinville to approve of the Montevallo development to meet these growth targets. Although the Applicant disputes the accuracy of the City staff's numbers, the Applicant has not demonstrated that the City is not on track to meet its targets.

8. The City of Woodinville currently has a diversity of housing within the R-1, R-4 R-6 R-12, R-24, R-48, TB and Central Business District (CBD) zoning designations that allow for a wide variety of housing types, incomes and living situations.

9. The FEIS completed by the City of Woodinville shows that the Montevallo development identifies unavoidable adverse impacts to transportation systems of the city and in the neighborhoods the development is set within. The impacts can be avoided by denial of the rezone. Reliance upon disputed mitigation measures and the safe driving habits of future residents of higher density developments is unwise and not in the public interest.

10. The Montevallo Development as proposed is not in character with the surrounding R-1 neighborhoods and properties.

11. The City of Woodinville must ensure that its capital investments carry out the goals and objectives of the comprehensive plan in a manner which is consistent with the Land Use Element, Capital Facilities Element and Transportation Element of the Plan.

12. The City of Woodinville must ensure that its capital investments carry out the goals and objectives of the comprehensive plan in a manner which is consistent with the Land Use Element, Capital Facilities Element, and Transportation Element of the plan.

13. The "need" criterion under WMC 21.44.070 ultimately requires an objective judgment by the City Council based upon plans, goals, policies and timeframes. The Council finds that the proposed rezone is not "needed" at this time.

14. While some Comprehensive Plan and code provisions can be construed as supporting further R-4 development within the low density residential areas of the City, the extent, character and timing of any such development is not indelibly predetermined.

15. The City Council has identified key priorities for planning growth and infrastructure investment in the Comprehensive Plan under a number of different elements as well as in the Municipal Code, the Capital Improvement Plan (CIP) and City's budget so that near-term and long-term growth proceeds as a coordinated, time efficient and cost effective investment process.

16. The Comprehensive Plan has a twenty year planning horizon and the City Council recognized that funding constraints require a need for prioritization of actions. As a result, the City Council selected the downtown area for its focus for growth and infrastructure requirements because the downtown has the existing infrastructure capacity and services readily available where the City could achieve many of its GMA goals for housing, employment, and economic development and transportation improvements. This is precisely what the Growth Management Act, Vision 2020 and the King County-wide planning policies are asking cities to do: to guide development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

17. King County countywide policies call for contiguous and orderly development within Urban Growth Areas and the provision for urban services to such development.

18. Chapter III Land Use Pattern of the County's Countywide Planning Policies describes policies relating to land use and development. Relevant land use (LU) policies are summarized as follows. Urban areas (which includes all of the City of Woodinville) are designated to accommodate a majority of future growth and at least the 20-year projection of population and employment growth (LU-25a & LU-26). Within Urban Areas, growth should first be directed to centers and urbanized areas with existing infrastructure capacity (LU-28). Growth phasing plans for the next 10 to 20 years are required and shall be based on locally adopted definitions, service levels, and financing commitments (LU-29). Chapter III also includes a statement that phased growth is required to promote efficient use of the land, add certainty to infrastructure planning and to insure that urban services can be provided to urban development.

19. The Growth Management Act urban growth goal states: "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner".

20. Vision 2020, a long-range growth and transportation strategy for Puget Sound Region, provides the following relevant frame work polices. Concentrate development in urban areas to conserve agricultural, forest, and environmental resources. Within urban growth areas, promote growth into centers that are connected by an efficient, transit-oriented, multi-modal transportation system (RF-1). Develop a transportation system that emphasizes accessibility, includes a variety of mobility options, and enables the efficient movement of people, goods, and freight (RF-4). The proposed rezone runs contrary to this strategy. .

21. The City Council decision to focus planning and growth in the downtown provided the context within short-term capital planning could be done and subsequent decisions made with a view to a longer planning horizon.

23. The City Council has given priority to capital improvements that: (1) protect the public health and safety; (2) have a positive impact on the operating budget through reduced expenditures; (3) correct existing deficiencies or maintain existing levels of service adopted in the Comprehensive Plan; and (4) provide critical City services such as police, surface water and transportation.

24. The City is not yet prepared to commit capital resources to the subject area in the near-term. Committing the City to prematurely construct infrastructure and provide services to this area will become increasingly problematic, resulting in an increasing inefficiency of services thereby lessening the economic gain and placing a growing strain on the fiscal resources of the community.

25. While new development creates impacts upon public facilities and is required to pay its fair share of costs associated with those impacts, it does little in the way of correcting existing deficiencies within the context of the Capital Improvement Plan (CIP) and the overall capacity of the City to provide for infrastructure needs and services. The City has a

26. While new development creates impacts upon public facilities and is required to pay its fair share of costs associated with those impacts, it does little in the way of correcting existing deficiencies within the context of the Capital Improvement Plan (CIP) and the overall capacity of the City to provide for infrastructure needs and services. The City has a 20 year list of transportation needs. Because of the scope, nature size and costs of these needs and because the sources of funding are limited relative to the cost of improvements, the City has focused its investment on major traffic chokepoints in and around downtown.

27. The City has provided in excess of \$100,000 to finance an ongoing sustainable development study, referenced in Ordinance 431 that will answer significant questions related to land use in the City that should be available to the City Council before additional rezones in the R-1 areas of the City are approved. See also the references to the study in the Staff Report.

CONCLUSIONS

1. In its quasi-judicial capacity, the City Council finds that, a site specific rezone of the property to R-4 density would be inconsistent with significant Comprehensive Plan Policies and does not bear a substantial relationship to the public health, safety, morals or welfare.
2. Approval of the proposed rezone is inappropriate at this time due to the deficient public facilities and services (other than sewer) in the area where the property is located and the currently ongoing sustainable development study
3. The proposed rezone and anticipated higher density development that would result does not meet the City Council's key priorities identified for planning growth and infrastructure investment in the Comprehensive Plan under a number of different elements as well as in the Municipal Code, the Capital Improvement Plan (CIP) and City's budget so that near-term and long-term growth proceeds as a coordinated, time efficient and cost effective investment process.
4. The City Council selected the downtown area for its focus for growth and infrastructure requirements because the downtown has the existing infrastructure capacity and services readily available where the City could achieve many of its GMA goals for housing, employment, and economic development and transportation improvements. The proposed rezone, as outlined, does not further the City's goals and objective in this regard which is to guide development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
5. The rezone is inconsistent with the City's strategy to meet its regional growth objective. The City has chosen to meet the growth objective in the CBD while insuring that new growth in other areas of the City does not negatively impact the City's transportation land use and capital facilities goals and objectives. RCW 36.70A directs growth as follows: growth should first be directed to centers and urbanized areas with existing infrastructure capacity (consistent with LU-28 County-wide planning policy). Growth phasing plans for the next 10 to 20 years are required and shall be based on locally adopted definitions, service levels, and financing commitments (LU-29). Chapter III also includes a statement that phased growth is required to promote efficient use of the land, add certainty to infrastructure planning and to insure that urban services can be provided to urban development.

6. The City of Woodinville planning approach is complying with GMA requirements. According to past King County Buildable Lands Reports and the preliminary 2007 report, the City has excess capacity to accommodate its GMA housing allocation and is also meeting its employment growth target. The City is providing and supporting affordable housing for the Eastside through its participation in a coalition of east King County cities (ARCH). The City of Woodinville Capital Facilities planning and CIP are addressing the City's infrastructure deficiencies and commits the City to extending infrastructure and services to support urban development with the intent of maximizing the benefit from capital projects relative to costs and resources and in an efficient manner.

7. While new development creates impacts upon public facilities and is required to pay its fair share of costs associated with those impacts, it does little in the way of correcting existing deficiencies within the context of the CIP and the overall capacity of the City to provide for infrastructure needs and services. The City has a 20 year list of transportation needs. Because of the scope, nature, size, and costs of these needs and because the sources of funding are limited relative to the cost of improvements, the City has focused its investment on major traffic chokepoints in and around downtown.

8. Planning is critical to assist a city in its evolution. Given the locational context of the City, the objective is to effectively and comprehensively think and plan in a manner consistent with sound regional planning. The City must proactively direct development to occur in appropriate locations and concurrent with the availability and provision of adequate public facilities and services. Planning comprehensively ensures the integrity of the City's growth strategy. Development which the City cannot readily and efficiently provide services to is clearly premature and is not consistent with the City of Woodinville Comprehensive Plan.

9. The current underlying zoning of the property at R-1 is inconsistent with the proposed density of the preliminary plat application.

DECISION

BASED UPON THE PRECEDING FINDINGS OF FACT AND CONCLUSIONS, THE CITY COUNCIL THEREFORE DENIES REZONE APPLICATION ZMA2004053 AND REVERSES THE HEARING EXAMINER'S APPROVAL OF THE PRELIMINARY PLAT APPLICATION PPA2004054 FOR THE PROPOSED "WOOD TRAILS SUBDIVISION.

APPROVED AND ADOPTED BY THE WOODINVILLE CITY COUNCIL this 20th Day of August, 2007.

Appendix C

Land Use Section from City Comprehensive Plan

Appendix C

CHAPTER 3 LAND USE

3.1 Introduction

This section discusses the plan for future land uses in the City of Woodinville. The timing of development and provision of services are key components of this planning process. In addition to the discussion below, Figure 3-3 Future Land Use Map is included to illustrate the various land uses and growth management strategies.

An analysis of existing conditions and projected needs (see Land Use Appendix) highlights issues and opportunities for the City of Woodinville. These factors, as well as the visioning process, were used to create goals and policies.

3.2 Goals and Policies

GOAL LU-1: To guide the City's population growth in a manner that maintains or improves Woodinville's quality of life, environmental attributes, and Northwest woodland character.

Policies

LU-1.1 Preserve the character of existing neighborhoods in Woodinville while accommodating the state's 20-year growth forecasts for Woodinville.

LU-1.2 Encourage future development in areas:

1. With the capacity to absorb development (i.e., areas with vacant or underdeveloped land and available utility, street, park, and school capacity, or where such facilities can be cost effectively provided), and
2. Where adverse environmental impacts can be minimized, and where such development will enhance the area's appearance or vitality.

LU-1.3 Phase development and supporting municipal services together in an organized, cost-effective manner.

LU-1.4 Coordinate with adjacent jurisdictions to ensure compatible land uses in areas along contiguous boundaries.

GOAL LU-2: To establish land use patterns, densities, and site designs that encourage less reliance on single-occupant vehicle travel.

Policies

LU-2.1 Provide a compatible mix of residential and commercial land uses downtown to:

1. Make it possible for people to safely walk or bicycle to work and shopping;
2. Reduce reliance on automobiles and reduce commuting time and distance,
3. Make area transit service more viable, and
4. Provide greater convenience for residents.

- LU-2.2** Connect residential, open space, and recreation areas by an appropriately planned network of streets, walkways, bicycle paths, and utility corridors.
- LU-2.3** Encourage the most intensive residential and employment land uses along major transportation routes to support transit service.
- LU-2.4** Encourage development of a transit system and facilities that link the Town Center Neighborhood and the Tourist District.

GOAL LU-3: To attain a wide range of residential patterns, densities, and site designs consistent with Woodinville's identified needs and preferences.

Policies

- LU-3.1** Encourage development that complements the existing residential development patterns in Woodinville's neighborhoods.
- LU-3.2** Preserve the existing natural environment of Woodinville's neighborhoods.
- LU-3.3** Maintain each residential area as a safe, pleasant, and enjoyable place to live.
- LU-3.4** Provide controls to minimize encroachment by incompatible land uses within and between zoning districts.
- LU-3.5** Allow lot clustering where applicable when residential development abuts sensitive areas or rural resource lands to provide open space buffers and to reduce potential land use conflicts.
- LU-3.6** Encourage moderate (5-8 d.u.) and medium (9-18 d.u.) density housing throughout the community where sufficient public facilities and services are available, where the land is capable of supporting such uses, and where compatible with adjacent land uses.
- LU-3.7** Permit a range of densities to encourage a variety of housing types that meet the housing needs of residents with a range of incomes.
- LU-3.8** Allow for an appropriate level of flexibility in the development regulations, while balancing community goals and the need for predictability in decision making.
- LU-3.9** Where appropriate, allow larger parcels with moderate density land use designations to develop with a mix of housing types, including single family, townhouse, apartment, and senior-assisted residences.

GOAL LU-4: To establish land use patterns that encourage a variety of commercial services and employment opportunities.

Policies

- LU-4.1** Create a vibrant compact downtown Woodinville that is an inviting place to work, shop, live, and socialize.
- LU-4.2** Encourage mixed-use development that balances residential and business uses within commercial areas.

- LU-4.3** Allow for appropriate development in the Tourist District that attracts tourists and still allows for uses in the underlying zoning.
- LU-4.4** Provide an adequate supply of land zoned for employment to support 20-year employment allocations as required by the King County; County Wide Planning Policies.
- LU-4.5** Limit expansion of neighborhood commercial centers to the size designated on the Future Land Use Map.
- LU-4.6** Ensure that development in neighborhood commercial centers is compatible with surrounding residential neighborhoods.
- LU-4.7** Establish special development conditions to ensure compatibility with existing uses in neighborhood commercial centers and the surrounding neighborhoods.
- LU-4.8** Accommodate a wide variety of industrial land uses consistent with responsible environmental practices.

GOAL LU-5: To provide a process for siting essential public facilities.

Policies

- LU-5.1** Define Essential Public Facilities, consistent with the Growth Management Act, as "those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, secured community transition facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes."
- LU-5.2** Coordinate with neighboring jurisdictions and with King and Snohomish counties by participating in the interjurisdictional process developed by the King County Growth Management Planning Council and the process adopted by the Snohomish County Tomorrow Steering Committee.
- LU-5.3** Use the following Siting Process to site essential public facilities.
 1. The City shall adopt and update a list of existing and potential essential public facilities (at a minimum that provided by Washington State Office of Financial Management).
 2. An essential public facility shall meet the following criteria to be considered:
 - a. Must meet definition in the Growth Management Act,
 - b. Must appear on city's or county's list, and
 - c. Must provide essential services to the residents of Woodinville, as well as other communities.
 3. An application shall be made to the Department of Community Development for a Special Use Permit.
 4. The following factors shall be analyzed as part of the siting process:
 - a. Environmental impact,
 - b. Economic impact to the City,
 - c. Traffic impacts,

- d. Compatibility with adjacent land uses,
- e. Ability to meet Zoning Criteria for a Special use Permit as defined in WMC 21.44.060,
- f. Public health and safety,
- g. Forecasted regional or statewide need,
- h. Ability of existing facilities to meet that need,
- i. Compatibility with this Comprehensive Plan,
- j. Evaluation in context of agency or district plan (and consistency with this plan), and
- k. Analysis of alternative sites.

- 5. Provide a public process that includes at a minimum noticing as required by WMC Title 17 and provides for at least one public hearing to be heard by the City's Hearing Examiner.

LU-5.4 Coordinate with adjacent jurisdictions in the siting of essential public facilities along common boundaries.

GOAL LU-6: To plan and develop a pedestrian-oriented multimodal transportation system approach to the downtown area that accommodates the needs of retail, office, and residential uses.

Policies

LU-6.1 Implement the street grid ordinance that provides for development of primary and secondary streets in downtown.

LU-6.2 Require non-motorized transportation facilities throughout downtown that promote pedestrian activity and ease of access to housing and commercial outlets.

LU-6.3 Where feasible and desirable, incorporate transit amenities into the design of all commercial and residential development.

GOAL LU-7: To encourage and achieve multi-story mixed uses in the downtown mixed-use area.

Policies

LU-7.1 Encourage a mix of commercial, office and residential land uses to locate in the downtown.

LU-7.2 Encourage the development of additional office space within the downtown mixed-use overlay.

GOAL LU-8: To manage growth and development within the Downtown Mixed-Use Overlay in a manner that balances the needs of commercial and residential uses.

Policies

LU-8.1 Encourage a mix of housing types in and around downtown for all economic segments of the community.

LU-8.2 Encourage multi-story construction that maintains existing vistas and views.

- LU-8.3** Locate larger developments of retail and residential uses nearest freeway access and major streets.
- LU-8.4** Encourage the development of underground parking or multistory parking structures in downtown as an alternative to surface parking.
- LU-8.5** Encourage mini-parks and open spaces in downtown.
- LU-8.6** Establish regulations for developments in office-designated areas that protect abutting low- and moderate-density residential parcels with appropriate restrictions on height, setbacks, landscaping, and access.
- LU 8.7** Ensure that regulations governing zoning incentives are used appropriately to further the goals and policies of the Comprehensive Plan.

GOAL LU-9: To maintain the downtown area as the center for commercial, civic, cultural, and recreational activities.

Policies

- LU-9.1** Encourage uses that will support day and evening activities for all ages.
- LU-9.2** Encourage linkage of paths and trails from the downtown to the rest of the Town Center Neighborhood and to the entire community.
- LU-9.3** Develop Sorenson School campus and purchase appropriate adjacent properties as a civic center, consistent with the City's adopted Civic Center Master Plan.

GOAL LU-10: To provide an active and diverse industrial area that promotes economic growth.

Policies

- LU-10.1** Limit non-industrial use of industrial lands to uses which are complementary to industrial activities.
- LU-10.2** Protect industrial lands from encroachment by other land uses, which would reduce the economic viability of industrial lands.
- LU-10.3** Develop industrial lands so as to minimize impacts on surrounding lands uses, especially residential land uses.
- LU-10.4** Establish new or additional industrial development that complies with the following criteria:
1. Sewer, water, and communications services should be available or planned for the industrial site area, and
 2. New sites designated for industrial use should have convenient access to existing or planned freeways or major arterials.

GOAL LU-11: To annex additional areas to the City, when requested, that are appropriate for the welfare of both the City and the annexed area.

Policies

- LU-11.1** Phase annexations in accordance with efficient provision of necessary services. Support annexation proposals that meet the following criteria:

1. Urban level public services (including police and fire protection, schools, transportation, sewer, water, and general government services) can eventually be provided to annexation areas,
2. The annexation does not create any pockets of unincorporated areas or special service districts,
3. The City has adopted a land use plan for the annexation area,
4. Residential areas contain potential urban densities unless environmental constraints preclude these densities, and
5. Annexations include greenbelts and/or open spaces.

- LU-11.2** Use inter-local agreements for implementation of land use policies and public improvement standards within potential annexation areas and mutual planning areas.

- LU-11.3** Determine Woodinville's Potential Annexation Areas in order to provide for annexations as requested by working with King and Snohomish Counties to review the Urban Growth Area boundary.

3.3 Urban Growth Areas

The Growth Management Act requires that each county planning under the act shall designate an Urban Growth Area or areas within which urban densities shall be developed. An Urban Growth Area may include territory located outside of a city if such territory is characterized by urban growth or is adjacent to territory already characterized by urban growth. Within the overall Urban Growth Area defined by counties, cities must also establish an urban growth area.

The Growth Management Act has established three criteria for establishing a city's Urban Growth Area:

1. Based on the growth management planning population and employment projections made for the county by the Washington State Office of Financial Management, the Urban Growth Area in the city shall include areas and densities sufficient to permit their county allocation of urban growth that is projected to occur for the succeeding 20-year period. Each Urban Growth Area shall permit urban densities and shall include greenbelt and open space areas,
2. Urban growth should be located in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and
3. Urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

Figure 3-1 shows the Urban Growth Area for the City of Woodinville and adjacent cities and counties. Woodinville's urban growth areas include the current city limits as well as the Grace Neighborhood.

3.4 Future Land Use Map

Figure 3-2 Future Land Use Map of the Land Use Element is the official map designating desired future land use patterns for the City of Woodinville. The map graphically represents the Land Use Element policies and serves to tie together the various elements of the Comprehensive Plan. The City's current land use is shown in Figure A3-1. Acreages for these land uses are shown in Table A3-7.

The Future Land Use Map is only to be used in conjunction with the written policies of the Comprehensive Plan as the policies indicate how the community wishes to implement its vision for the city, its goals and objectives for land use, and other related elements of the plan.

Under the Growth Management Act, all zoning actions and development regulations must be consistent with the community's adopted comprehensive plan. Since the Growth Management Act requires that a city's development regulations be consistent with its comprehensive plan, it is imperative that the Future Land Use Map be sufficiently detailed to enable the public to understand what the designations on the Future Land Use Map imply for future zoning and what land uses will be allowed in various locations.

3.4.1 Land Use Designations and Location Criteria

The land use categories described below have been designated in the Future Land Use Map. The following criteria have been used in applying the various land use designations on the Future Land Use Map and are shown in Figure 3-2. These criteria shall be used in evaluating future changes to any land use designation, in concert with the policies for amendments outlined below.

The Future Land Use Map will serve as a guide for elected officials as they make decisions about the need for, and the locations of, public services, utility systems, transportation routes, and other capital facilities. Private citizens, developers, and others interested in the City's future will also consult the Map as they make decisions about where to live, work, invest, and conduct business.

The Future Land Use Map and its accompanying policies will also play a key role in land development and zoning decisions made by elected and appointed officials. All zoning decisions must be consistent with the Comprehensive Plan.

Low Density Residential

This designation has been applied to all areas currently developed with predominantly single-family detached dwellings. Other dwelling types will be allowed under certain circumstances, such as duplexes, single-family attached, or accessory (i.e., mother-in-law) dwellings. The permitted density for this designation will not exceed 4 dwelling units per acre.

Moderate Density Residential

This designation has been applied to areas currently developed with single-family detached and attached dwellings. These include duplexes and triplexes, condominiums, townhomes, and accessory dwelling units. The intent of this designation is to support urban residential densities while still preserving Woodinville's small town atmosphere. The permitted density for this designation is between 5 and 8 dwelling units per acre.

Medium Density Residential

This designation has been applied to areas currently developed with lower density multi-family dwelling units. The intent of this designation is to provide opportunities for apartments and condominiums that are generally 1 to 4 stories and compatible with abutting low and moderate density residential areas. This designation provides housing densities supportive of public transit along transit routes. This designation can be used as a transition between existing commercial areas and adjoining, lower density residential areas. The permitted base density for this designation is between 9 and 18 dwelling units per acre.

High Density Residential

This designation has been applied to areas around downtown Woodinville and includes multi-story apartments and/or condominiums. The intent is to locate this designation near public transit facilities or along transit corridors, near commercial and employment areas, and near community facilities such as parks, and community centers. This designation creates a transition from high intensity uses, such as commercial or industrial development, to lower intensity residential areas. The permitted density for this designation is 19 dwelling units per acre or greater.

Neighborhood Business

This designation provides convenient daily retail and personal services (including offices) for a limited service area while minimizing impacts of commercial activities on nearby residential properties. This designation does allow for a mix of housing and retail/service uses and excludes industrial and large scale regional commercial uses.

Tourist Business

This designation provides convenient daily retail and personal services for a limited service area with the intent of encouraging tourism-related uses. This designation excludes residential and most regional facility uses.

Central Business District

This designation has been applied to the existing downtown commercial district in downtown Woodinville. It is intended to provide a broad mix of comparison retail, moderate to high density residential, professional, services, and recreation/cultural uses that serve the regional market.

Office

This designation provides for pedestrian and transit-oriented developments that provide space for professional services and related employment activities.

High-Density Residential/Office

This designation has been applied to a single parcel in the City, where mixed residential and office uses are appropriate. Development possibilities will include all uses allowed in both the High Density Residential and the Office zones, so long as at least 300 dwelling units are developed on the site.

Auto Service/General Commercial

This designation has been applied to an existing industrial zone within Woodinville where auto-oriented general commercial services have developed. This designation should be located

along major arterial streets within the city and should not be located near low to moderate density residential areas.

Mixed-Use Overlay

This designation has been applied to the downtown area of Woodinville. The intent of this designation is to encourage the development of the community's center as a pedestrian-oriented place that supports a wide variety of commercial, residential, governmental, professional services, and entertainment activities. Mixed-use developments that contain, for example, retail on the ground floor and residential or office above are highly encouraged in this designated area.

Industrial

This designation has been applied to areas currently suited for industrial and business park activities. These areas are located along major arterial streets.

Tourist District Overlay

This district is located in the southern city limits of Woodinville and is intended to promote tourism and tourist-related activities.

Open Space Tracts

This designation has been applied to all "open space tracts" within the city limits that have been retained as open space areas. Many of these areas were set aside as part of development agreements and are owned by King County. They are often located in sensitive environmental areas. Open Space areas may be suitable for passive and/or active recreation development such as neighborhood parks.

Public Parks

This designation has been applied to all existing and planned publicly owned parks.

Public and Institutional

This designation has been applied to existing government/public facilities and includes city hall, libraries, public schools, fire and police stations, as well as the land owned by the Woodinville Water District.

Joint Planning Area

This designation has been given to the Grace Neighborhood in anticipation of annexation by the City of Woodinville. This area is subject to joint planning activities and agreements to ensure a smooth transition from Snohomish County to the City of Woodinville.

3.4.2 Amending the Future Land Use Map

From time to time, the City may be asked to amend the designations of the Future Land Use Map. The Planning Commission and City Council must carefully evaluate such requests to amend the Future Land Use Map to determine the long-term benefits and costs to the City. Requests will be considered annually. The factors listed below should be considered in reviewing map amendment requests. Whether initiated by the City or a private party, the burden of proof is upon the proponent to demonstrate the long-term benefit to the City.

1. How is the proposed land use designation supported by or consistent with the existing policies of the various elements of the Comprehensive Plan? If it isn't, the development should demonstrate how the change is in the best long-term interest of the City.
2. How does the proposed land use designation promote a more desirable land use pattern for the community? If so, a detailed description of the qualities of the proposed land use designation that make the land use pattern for the community more desirable should be provided to enable the Planning Commission and City Council to find that the proposed land use designation is in the community's best interest.
3. What impacts would the proposed change of land use designation have on the current use of other properties in the vicinity, and what measures should be taken to ensure compatibility with the uses of other properties in the vicinity?
4. Comments received from affected property owners and residents.

3.5 Annexation

Annexation is the process by which unincorporated lands adjacent to the city boundary become part of the City. When annexed to the City, land use and zoning designations are assigned. The main reasons for annexation include, but are not limited to, increasing the efficiency and reducing the fragmentation in the delivery of municipal services, greater control of land use and service planning within a geographically related area, more logical city boundaries, and the desire of adjacent residents to be part of the city.

Within the designated urban growth area, it is appropriate to phase annexations so that governmental services can be extended to the annexing area with a minimum of service disruption or adverse fiscal impacts. Phasing annexations encourages the City to grow and services to be extended in a deliberate, well-planned, and efficient manner. Phasing annexations also promotes more efficient use of land by encouraging in-fill development, which, in turn, discourages urban sprawl and preserve open space.

The City should work with King or Snohomish County to ensure a smooth transition and avoid service disruption to the Woodinville City residents. There should be city-county cooperation in the development of compatible land uses and service standards, which would help ease the future transition from county to city jurisdiction in an area. Inter-local agreements can help avoid difficulties in the change in jurisdiction.

The process for annexing new lands should include the following:

1. Pre-annexation planning agreements negotiated between the County and the City for proposed annexations of a significant size or nature;
2. Pre-annexation planning agreements that address, at a minimum, the following issues in the proposed annexation area:
 - a. Land use planning,
 - b. Transportation planning and mitigation,
 - c. Development standards and development review,
 - d. Surface water drainage,
 - e. Utilities planning and provision,

- f. Housing, including affordable and fair housing,
 - g. Historic preservation,
 - h. Parks, trails, and open space,
 - i. Environmentally sensitive areas including, but not limited to, steep slopes, bodies of water, floodplains, and wetlands, and
 - j. Fire protection.
3. A joint City-County team comprised of appropriate staff from each jurisdiction shall be established to coordinate annexation and incorporation proposals and facilitate a smooth transition from County to City jurisdiction,
 4. Provisions for open spaces and urban separators should be included in large annexation proposals,
 5. Neighborhood goals that seek to preserve the unique characteristics of that neighborhood should be incorporated into annexation proposals, and
 6. Strategy to address taxes, revenues, and other financial considerations such as economic impacts of the annexation upon the City.

3.6 Implementation Strategies

The effectiveness of any comprehensive planning effort can be measured by the degree to which its goals are recognized and its policies are implemented. Implementation requires a commitment of both public and private investment. However, as private investment in development projects occur, a public investment must be made to provide such development with utility systems, streets, police and fire protection, and other services. Decisions on the specific location and timing of a development project are traditionally initiated by the private sector. The City must be involved with the coordination between private development and public facilities and services.

Adoption of the Comprehensive Plan is the first step in a series of commitments the City must make to achieve the vision and goals of the community. Adopting the plan commits the City to future actions such as spending public dollars on capital facilities and public services, and revising codes and regulations. In adopting the Comprehensive Plan, the City acknowledges that future growth in the community will require increased public services and capital expenditures. Land use regulations must be evaluated and revised to ensure that they are promoting the best interest and intentions of the community.

The policies of the Land Use Element can be implemented through a variety of methods. Listed below are a number of tools the City can use to further the goals and objectives of the Land Use Element:

1. Develop a series of Sub-Area Master Plans:

1.1 Downtown Master Plan for the City of Woodinville

Discussion: The Comprehensive Plan focuses considerable attention on downtown Woodinville. This includes the retail core (along NE 175th Street) as well as the new auto service/general commercial adjacent to Woodinville-Snohomish Road. While the Land Use Element of the Comprehensive Plan lays

the conceptual groundwork and vision for the downtown, the City will need to develop a more detailed plan to encourage and attract the type of development the Comprehensive Plan envisions. At a minimum, this plan should address the following items that are noted in this Comprehensive Plan:

- a. Development of a street grid system that improves vehicular circulation while addressing the needs of pedestrians and bicyclists,
- b. Development of the Civic Campus as a focal point for community services and public events,
- c. Development of a pedestrian boulevard parallel and south of NE 175th Street and extending east from the proposed civic campus,
- d. Visual issues and opportunities,
- e. Incentives and regulations to encourage housing in the downtown; using such techniques as mixed-use development and thereby creating a more lively and diverse town center,
- f. Methods to create non-vehicular linkages (i.e., trails and sidewalks) to surrounding residential neighborhoods and recreational opportunities, as well as appropriate transitions and interface between downtown and these neighborhoods,
- g. Creating strong linkages between downtown and the Tourist District, and
- h. Encouraging open spaces and mini parks.

1.2 Little Bear Creek Corridor Master Plan:

Discussion: The General Business, Industrial, and Residential zoned areas adjacent to Little Bear Creek within the City including the Pl zoned parcels (High School site) and wetland/pond area located in the Wedge Neighborhood in the Northwest corner of the City. Issues to address include:

- a. Develop the road system to accommodate existing uses within the corridor and relieve traffic pressures on the downtown vehicle circulation,
- b. Create a design for the lineal park that includes pedestrian linkages to the City's park/trail system, education opportunities, and environmental preservation,
- c. Designate allowed land uses compatible with the surrounding areas and adjoining land uses including the lineal park,
- d. Develop measures including incentive to promote economic vitality with the corridor,
- e. Create a uniform gateway and sign design to be used with and at the designated locations within the corridor,
- f. Enhance design guidelines to contain measures that are sensitive to vistas in and above the corridor, and
- g. Coordinate the relationship of the Little Bear Creek Corridor with the downtown area to ensure consistency and transitional opportunities are considered.

1.3 Northwest Gateway Master Plan:

Discussion: The Commercial, Industrial, and Multi-family zoned area west of 131st Ave NE and, north and west of the Woodinville to Renton railway line (tracks). Issues to address include:

- a. Permitted land uses and zoning,
- b. Vehicle circulation,
- c. Stream and buffer issues,
- d. 178th (Private Road),
- e. Master Plan developments for area,
- f. Visual issues,
- g. Connectivity to Downtown,
- h. Uses (Residential/Commercial),
- i. Trail connectors to Downtown,
- j. Methods to create non-vehicular linkages,
- k. Incentives to encourage development,
- l. Methods to create non-vehicular linkages (i.e., trails and sidewalks) to surrounding residential neighborhoods and recreational opportunities, as well as appropriate transitions and interface between downtown and these neighborhoods,
- m. Building heights,
- n. Design standards,
- o. Signage,
- p. Freeway landscaping,
- q. Environmental opportunities, and
- r. Linkage to proposed CCR highway.

1.4 Industrial Master Plan:

Discussion: (1) Valley Industrial – All of the Industrial zoned area located north of the Tolt Pipeline right-of-way and south of the proposed Northwest Gateway Master Plan Study Area (see above). (2) North Industrial – The Industrial zones area located north of downtown Woodinville, east of SR 522. Issues to address include:

- a. Road signage to Tourist District,
- b. Transitions to adjacent zones,
- c. Land Uses,
- d. Ability to have retail sales (10% allowed at present),
- e. SOB zone factors,
- f. Transportation issues,
- g. Landscaping,

h. Signage, and

i. Visual opportunities.

1.5 Tourist District Master Plan:

Discussion: All of the area south of the Tolt Pipeline right-of-way located within the City limits. The City prepared a Tourist District Master Plan in 1997. To encourage consistency of this area with other sub-area planning, an updated Master Plan for the Tourist District should be prepared. Issues to address include:

- a. Linkages to Downtown,
 - 1. Transportation (Rail, motorized and non-motorized), and
 - 2. Economic (advantages of each sub-area to the other).
- b. Coordination with County on planning,
- c. Recreation (ball fields), water oriented, ban enhancement of Sammamish River,
- d. Derby Creek/Sammamish River,
- e. Signage,
- f. Link two sides of Tourist area,
- g. Willows Road extension vs. pedestrian access,
- h. Rail linkage,
- i. Retail opportunities,
- j. Other compatible land uses in Tourist District,
- k. Design Standards review,
- l. Under grounding of utilities,
- m. Parking opportunities,
- n. Environmental opportunities,
- o. Transition to industrial sub-area,
- p. Connector trail along state Route 202 and Tolt Pipeline right-of-way, and
- q. Assess properties for potential historic landmark designation.

1.6 Grace Master Plan:

Discussion: The proposed Grace Annexation area consisting of the industrial and commercial zoned area immediately north of the City limits located in Snohomish County within the Urban Growth Area.

- a. Coordinate with Snohomish County service providers; including water, fire districts, etc.,
- b. Inter-local agreements as necessary,
- c. Consider moving Sexually Oriented Business zone to Grace,
- d. Compatibility with Snohomish County regulations,

- e. Land-uses and transitions,
- f. Ability to have retail sales (10% allowed off),
- g. Transportation issues,
- h. Landscaping,
- i. Signage, and
- j. Visual opportunities.

2. Update the Zoning Code and Zoning Map to reflect the goals and policies of this Comprehensive Plan.

Discussion: Some of the policies contained in the Land Use Element will require revisions to the Zoning Code text. The Zoning Map, as part of the Zoning Code, will also need to be amended to bring the zoning classifications into consistency with the land use designations of the Future Land Use Map. Specific changes to the Zoning Map and Code that will need to be made as a result of the Comprehensive Plan include:

- a. Incentives to promote mixed-use development in downtown,
- b. Provisions to accommodate the proposed Civic Campus,
- c. Provisions for open space and parks,
- d. Revisions to support a changing industrial base, and
- e. Periodically review, revise, and create development incentives to ensure their effectiveness in meeting the Vision, Goals, and Policies of Comprehensive Plan. The review should include an evaluation of whether or not the incentives are being used as intended.

Additionally, from time to time the Zoning Code and Map will need to be modified based on changes to the Comprehensive Plan and/or if the City finds it necessary to be more assertive or pro-active in realizing its land use goals.

3. Revise other City codes and ordinances to ensure consistency with the Comprehensive Plan.

Discussion: The City has a variety of regulations to ensure safe, orderly development consistent with the Comprehensive Plan. These include the Subdivision Code, grading and drainage ordinances, the Capital Facilities Plan, and the Shoreline Master Program. These regulations should be evaluated to ensure consistency with the goals and policies of the Comprehensive Plan.

4. Revise Conditional Use Permit requirements to minimize visual and traffic impacts of higher density development on established residential neighborhoods.

Discussion: This strategy will help to ensure that the character of existing neighborhoods is protected as the city becomes more urbanized.

5. Support the development, adoption, and implementation of the Bear Creek Valley Ground Water Management Plan, as well as other ground

water plans that address protection of Woodinville's ground water resources.

3.7 Monitoring and Amending the Land Use Element

Although the Land Use Element is intended to be a guide for the public, elected officials, Planning Commission, and City staff in making decisions concerning community growth and land use and development, it is not so rigid as to be inflexible or unresponsive to changing circumstances. While changes to the Land Use Element will be required from time to time, they should be carefully considered, responsive to the changing needs of the community, and in the best long-term interest of the entire community. To determine if the Land Use Element is effectively implementing the vision of the community, it should be periodically reviewed to determine how well it is performing. This is not to suggest that the policies of the Land Use Element be changed routinely, but that they are reviewed from time to time to keep the Plan abreast of legal requirements, community needs, and changing circumstances.

The Growth Management Act allows jurisdictions to amend comprehensive plans only once per year. The process for updating and amending the Comprehensive Plan will be defined herein and. By City ordinance, changes to either the policies or land use map of the Land Use Element can be made only through a public review process conducted by the Planning Commission and City Council. The Planning Commission must conduct a public hearing and make a recommendation to the City Council. The City Council has the final authority to approve or deny a request to amend either the policies or land use map of the Land Use Element.

3.7.1 Monitoring

To measure the effectiveness of the implementation strategies for the Land Use Element, it is necessary to monitor the progress made toward achieving the many goals and objectives contained in the text. The City does track certain measures (dwellings, population, square feet of building space, transportation improvements, etc.) of development activity, which can be used to determine if certain goals are being met. For those types of actions, which can be quantified, the City should maintain an up-to-date database, which can be easily revised to measure such items as land consumption, inventory of vacant land or various types (single family residential, multiple family, commercial, industrial, etc.) employment levels, building permits, housing costs, vacancy rates, and population. The City's land use monitoring program will be useful in coordinating local and regional efforts to implement the countywide planning policies for King and Snohomish Counties.

The more subjective qualities, such as overall community appearance, quality of life, and neighborhood character, are more difficult to measure yet very important in rating the overall effectiveness of the Land Use Element. Periodic public opinion surveys can be used to gauge these less tangible items. Typically, subjective aspects of community life have had more effect on the land use decisions made by appointed and elected decision makers than measurable trends, data, and growth projections. Land use plan decisions are often based on intuition, or "how things feel" rather than on measurable statistical factors. Although often immeasurable, perceptions about the quality of character of growth must be understood if they are to be used as basis for amending policies of the Land Use Element.

3.7.2 Amending Policies

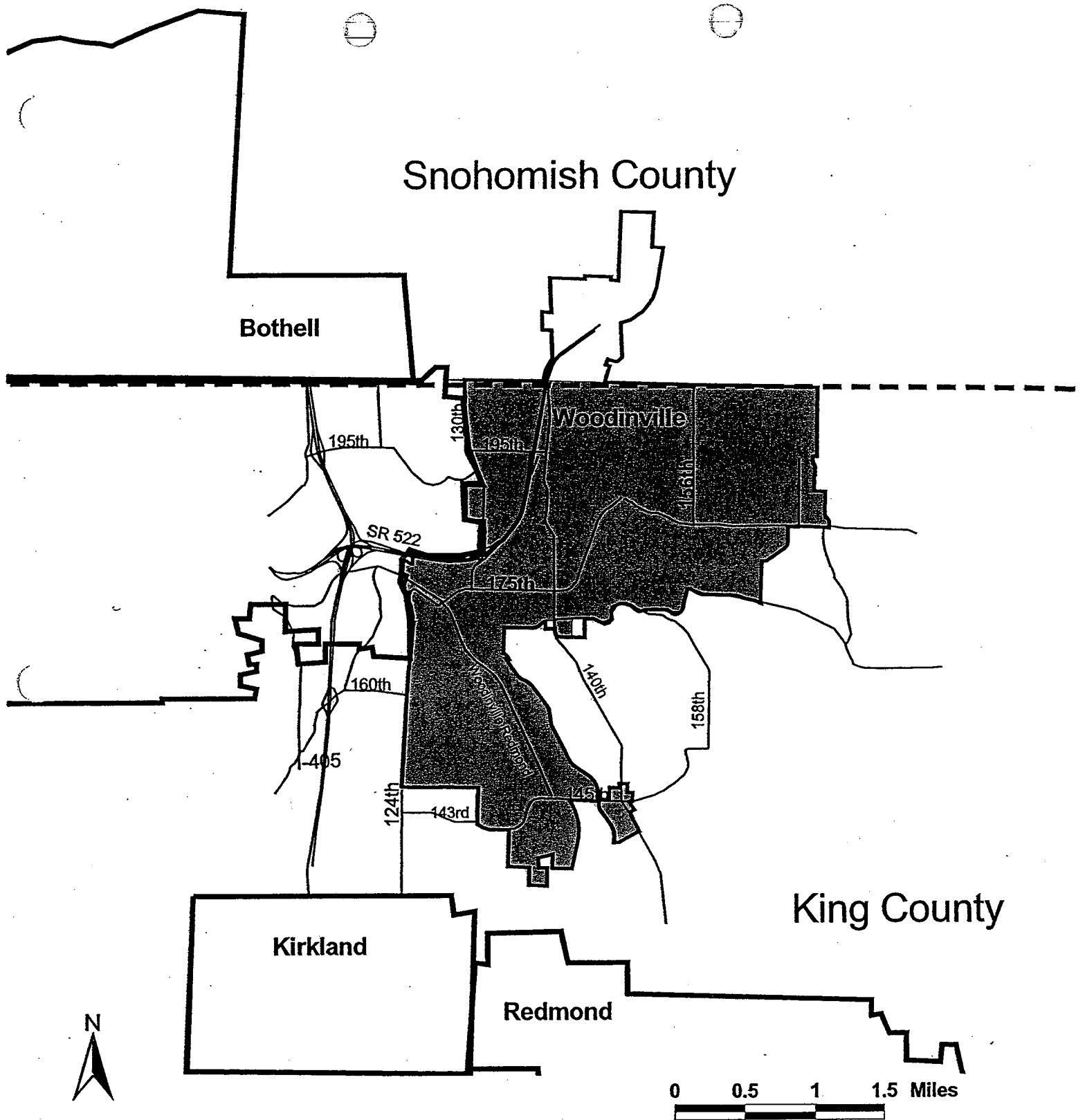
The policies of the Land Use Element are the basis for many actions taken by the City and private sector. The foundation for the policies should be grounded in legal requirements, such as the Growth Management Act, sound planning and land use principles, the community's vision and values, and the community's anticipated future growth needs. From time to time

laws are changed, economic conditions or social values change, growth trends cause a shift in land use needs, or the community's idea of what it wishes to be may be altered. When such changes occur, it is appropriate to review the goals and policies.





The policies of the Land Use Element are intended to provide a stable framework to guide the long-term physical growth within the Woodinville Planning Area. Therefore, consideration of changes to the land use policies should be based on the long-term benefit to the community. Changes to the foundations upon which the policies are based may cause a need to change the policies and subsequent programs or regulations, which implement the policies. Major policy changes should be viewed in the context of changes to law, changed socioeconomic conditions, shifts of community opinion and priorities, and significant changes to the amount and characteristics of anticipated future growth. Changes will be considered every five years.

of the new proposed strategy, it will allow access to additional resources, primarily personnel and, if needed, specialized equipment, which is currently not available. The new strategy will also allow the Department to respond to a variety of fire incidents and emergencies more effectively and efficiently.

1. The first step in the process of identifying a problem is to define the problem. This involves identifying the symptoms of the problem and determining the scope of the problem.



Legend

-  Urban Growth Boundary
-  Major Roads
-  City of Woodinville
-  County Line

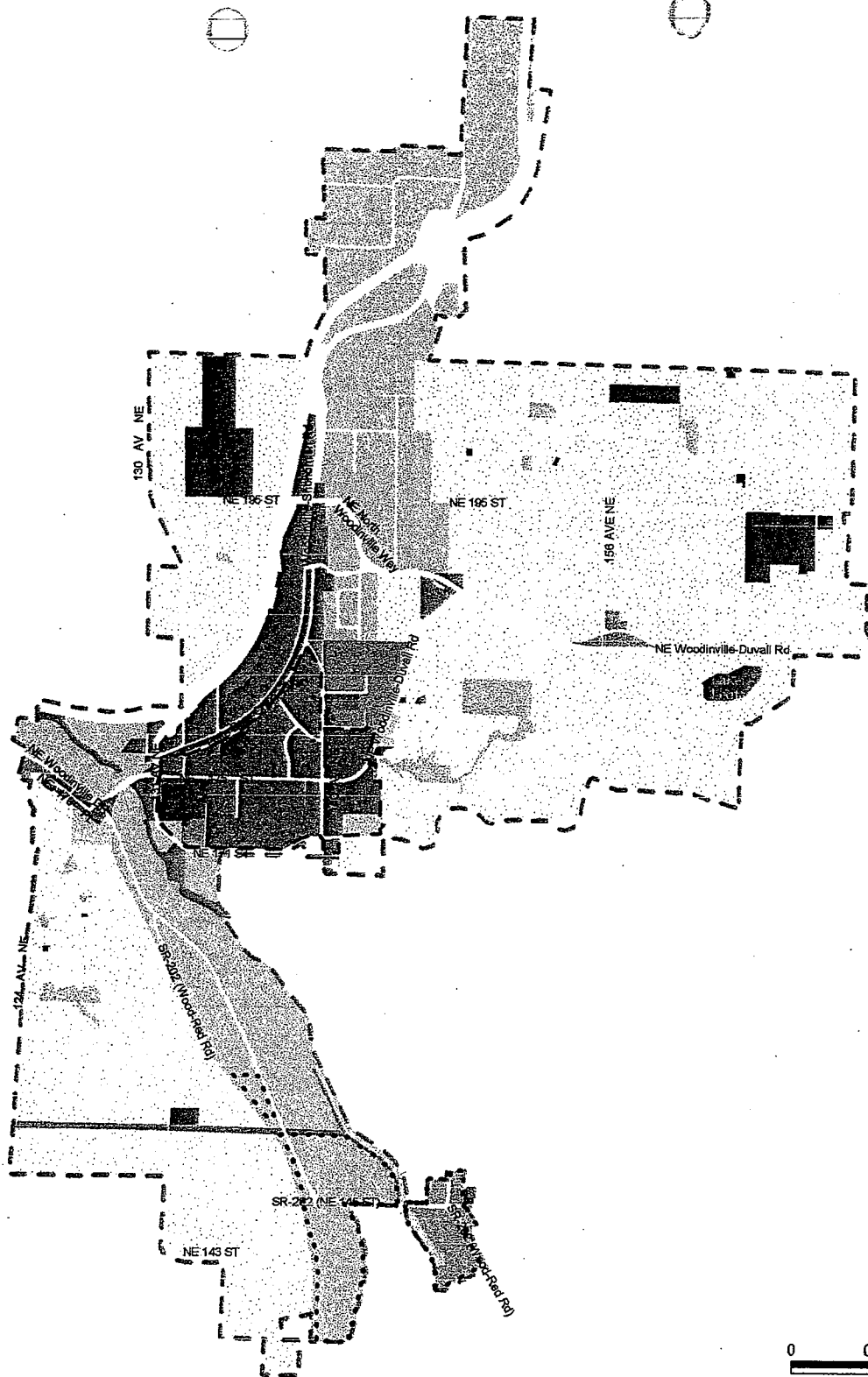
Note: This map is a pictorial representation and the City does not warrant its accurate depiction.

Figure 3-1
City Limits of Woodinville
and Surrounding Communities

Source: King County, 2002

6/20/02 - EFC





- | | | |
|---------------------------------|-------------------------|-----------------------|
| Low Density Residential | Neighborhood Business | Public/Institutional |
| Moderate Density Residential | Tourist Business | Public Parks |
| Medium Density Residential | Office | Openspace |
| High Density Residential | Central Business | Mixed-Use Area |
| High Density Residential/Office | Auto/General Commercial | Tourist District |
| | Industrial | Urban Growth Boundary |

NOTE: This comp plan map is a pictorial representation and the City does not warrant its accurate depiction.

Figure 3-2
Future Land Use Map for
the City of Woodinville

Appendix D

City Land Use Zoning Map

Appendix D

Figure 3.4-2a Zoning 2006 and Urban Growth Boundary

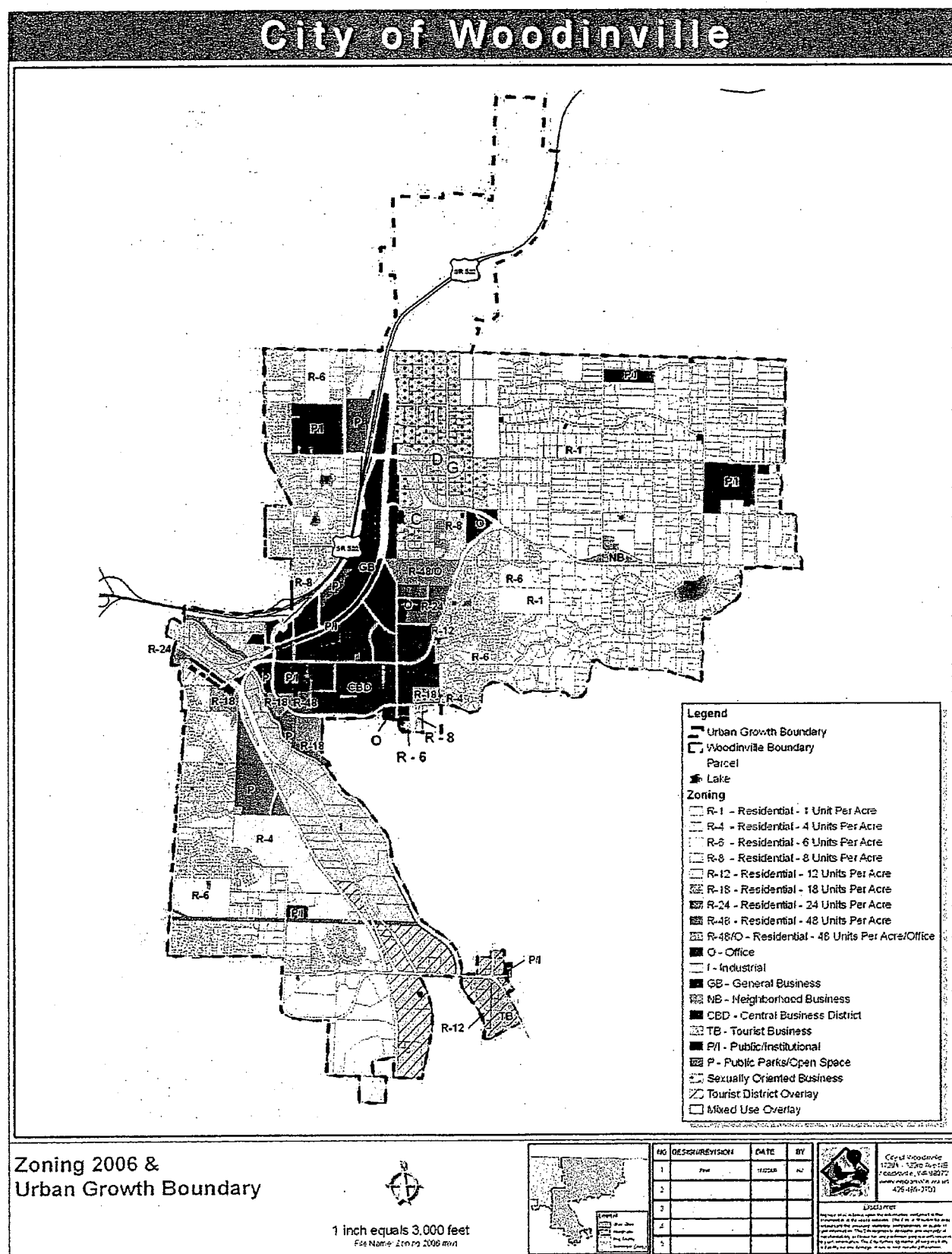


Figure 3.4-2b 2006 Land Parcels by Size

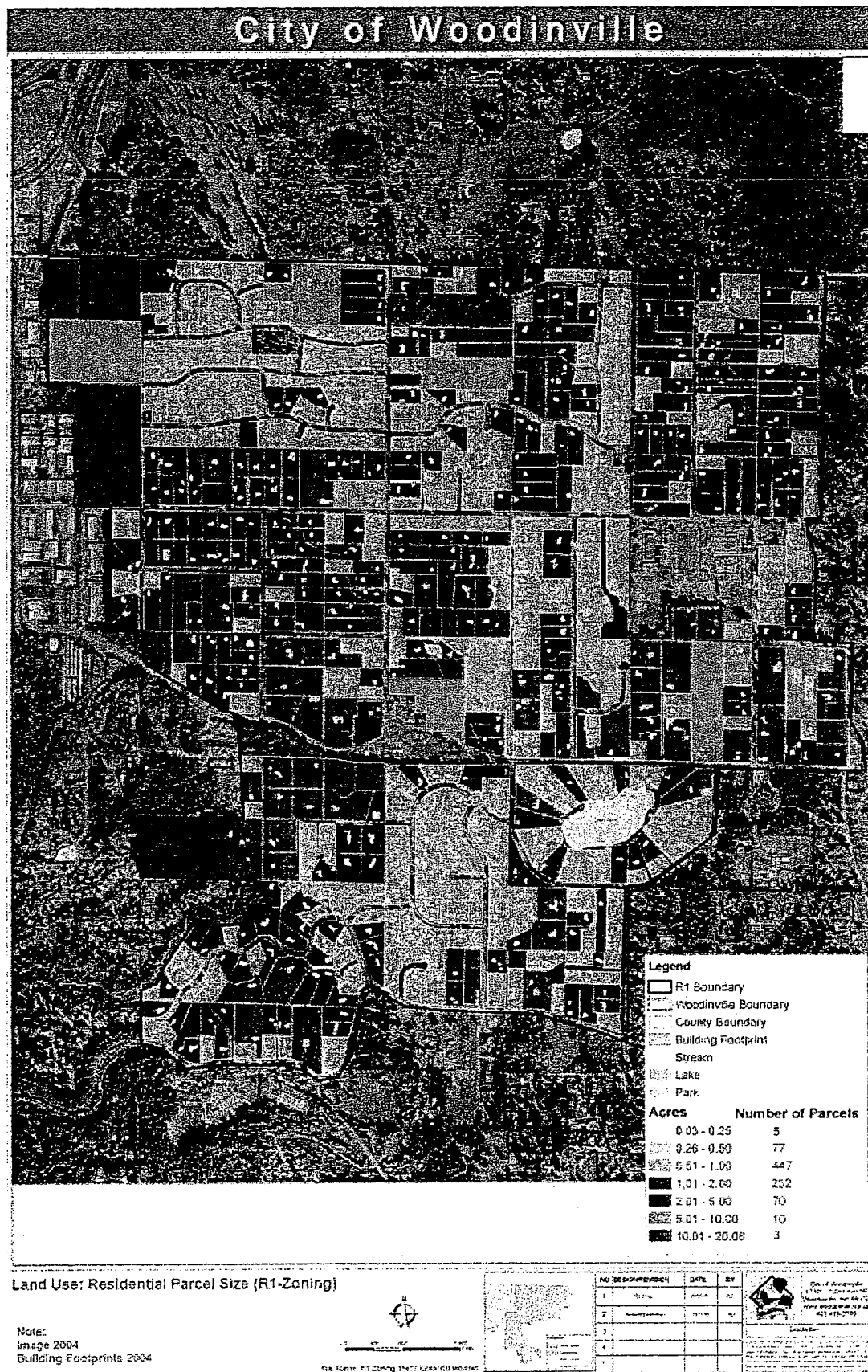
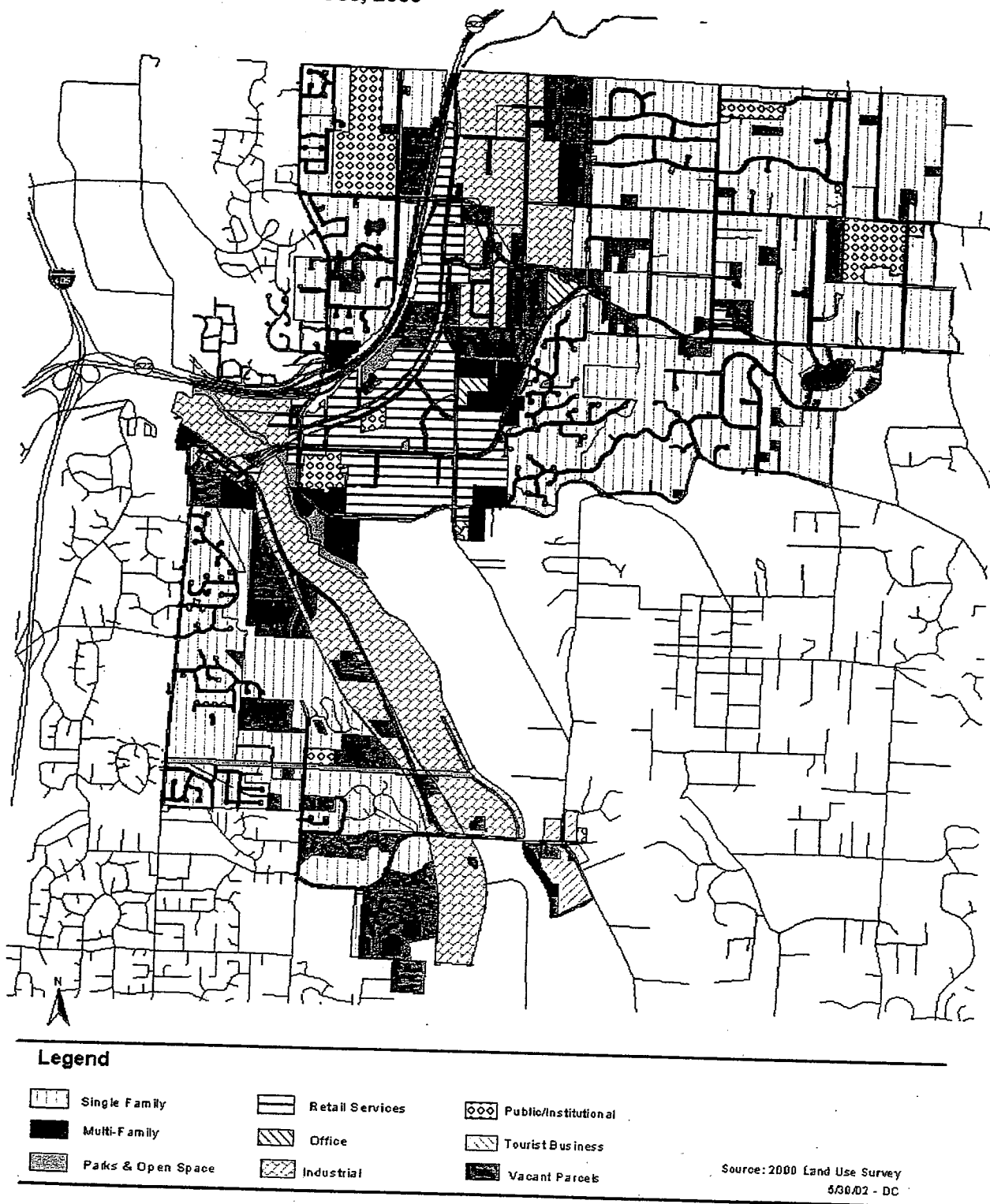


Figure 3.4-1 Woodinville Land Use, 2000



Appendix E

City Zoning Regulations

Appendix E

(5) The Planning Director is hereby authorized after July 14, 1997, to incorporate drawings as necessary for the purpose of illustrating concepts and regulatory standards contained in this title; provided, that the adopted provisions of the code shall control. (Ord. 175 § 1, 1997)

21.02.100 Severability.

Should any chapter, section, subsection, paragraph, sentence, clause or phrase of this title be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portion of this title. (Ord. 175 § 1, 1997)

Chapter 21.04

ZONES, MAPS AND DESIGNATIONS

Sections:

- 21.04.010 Zones and map designations established.
- 21.04.020 Zone and map designation purpose.
- 21.04.030 *Reserved.*
- 21.04.040 Public/Institutional zone.
- 21.04.050 *Reserved.*
- 21.04.060 *Reserved.*
- 21.04.070 *Reserved.*
- 21.04.080 Residential zones.
- 21.04.085 Neighborhood Business zone.
- 21.04.090 Tourist Business zone.
- 21.04.100 General Business zone.
- 21.04.110 Central Business District.
- 21.04.120 Office zone.
- 21.04.130 Industrial zone.
- 21.04.140 High Density Residential (R-48)/Office zone.
- 21.04.150 Park.
- 21.04.160 Map designation – Special district overlay.
- 21.04.170 Map designation – Newly annexed territory.
- 21.04.180 Map designation – Undesignated property.
- 21.04.190 Zoning maps and boundaries.

21.04.010 Zones and map designations established.

In order to accomplish the purposes of this title the following zoning designations and zoning map symbols are established:

Zoning Designations	Map Symbol
Public/Institutional	P/I
Residential	R (base density in dwellings per acre)
Neighborhood Business	NB
Tourist Business	TB
General Business	GB
Central Business District	CBD
Office	O
Industrial	I
High Density Residential/Office	R-48/O
Park	P
Special District Overlay	Pattern applied to affected area

(Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 194 § 1, 1997; Ord. 175 § 1, 1997)

21.04.020 Zone and map designation purpose.

The purpose statements for each zone and map designation set forth in the following sections shall be used to guide the application of the zones and designations to all lands in the City of Woodinville. The purpose statements also shall guide interpretation and application of land use regulations within the zones and designations, and any changes to the range of permitted uses within each zone through amendments to this title. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.030 Reserved.

(Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.040 Public/Institutional zone.

(1) The purpose of the Public/Institutional zone (P/I) is to provide and protect properties devoted to public and semi-public uses and uses providing social and physical services to the Woodinville community. This purpose is accomplished by:

(a) Providing a zone in which uses serving public needs may be located;

(b) Limiting residential and privately owned operations; and

(c) Protecting adjacent properties from potential impacts of public uses.

(2) Use of this zone is appropriate on properties designated by the Comprehensive Plan to be public and/or institutional, such as schools, government facilities, social services, hospitals, libraries, utilities, etc. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 194 § 1, 1997; Ord. 175 § 1, 1997)

21.04.050 Reserved.

(Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.060 Reserved.

(Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.070 Reserved.

(Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.080 Residential zones.*

(1) The purpose of the Urban Residential zones (R) is to implement Comprehensive Plan goals and policies for housing quality, diversity and affordability, and to efficiently use residential land, public services and energy. These purposes are accomplished by:

(a) Providing, in the low density zones (R-1 through R-4), for predominantly single-family detached dwelling units. Other development types, such as duplexes and accessory units, are allowed under special circumstances;

(b) Providing, in the moderate density zones (R-5 through R-8), for a mix of predominantly single-family attached and detached dwelling units. Other development types, such as apartments, duplexes, and townhomes, would be allowed so long as they contribute to Woodinville's small town atmosphere as articulated in the vision statement found in the City's Comprehensive Plan and conform to all applicable regulations;

(c) Providing, in the medium density zones (R-9 through R-18), for duplexes, multifamily apartments, and townhomes, at densities supportive of transit and providing a transition to lower density areas; and

(d) Providing, in the high density zones (R-19 through R-48), for the highest residential densities, consisting of duplexes and multistory apartments. Developments have access to transit, pedestrian and nearby commercial facilities, and provide a transition to high intensity commercial uses.

(2) Use of this zone is appropriate in residential areas designated by the Comprehensive Plan as follows:

(a) The R-1 zone on or adjacent to lands with area-wide environmental constraints, or in well-established subdivisions of the same density, which are served at the time of development by public or private facilities and services adequate to support planned densities;

(b) The R-4 through R-8 zones on urban lands that are predominantly environmentally unconstrained and are served at the time of development, by adequate public sewers, water supply, roads and other needed public facilities and services; and

(c) The R-12 through R-48 zones in appropriate areas of the City that are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services. (Ord. 447 § 1, 2007; Ord. 431 § 2, 2007; Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

*Code reviser's note: Ord. 447 became effective on September 11, 2007, and shall remain effective for a period of six months unless terminated earlier or subsequently extended by the City Council.

21.04.085 Neighborhood Business zone.

(1) The purpose and intent of the Neighborhood Business zone (NB) is to provide for small-scale, convenience retail shopping and office facilities at the neighborhood level located in accordance with



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the City of Woodinville Comprehensive Plan and encourage the compatible integration of small-scale shopping and office centers into the neighborhood areas which it serves.

(2) Use of this zone is appropriate in neighborhood centers designated by the Comprehensive Plan which are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services. (Ord. 295 § 4, 2001)

21.04.090 Tourist Business zone.

(1) The purpose of the Tourist Business zone (TB) is to encourage tourist-related uses, to provide convenient daily retail and personal services for a limited service area, and to minimize impacts of commercial activities on nearby properties. These purposes are accomplished by:

(a) Limiting nonresidential uses to those retail or personal services which can serve the everyday needs of the tourist industry and surrounding residential area;

(b) Allowing for a mix of retail, service and residential uses; and

(c) Excluding industrial and community/regional business-scaled uses.

(2) Use of this zone is appropriate in areas designated tourist business by the Comprehensive Plan which are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services. (Ord. 379 § 8, 2004; Ord. 347 § 5, 2003; Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.100 General Business zone.

(1) The purpose of the General Business zone (GB) is to provide auto-oriented retail and services for local and regional service areas that exceed the daily convenience needs of residential neighborhoods but that cannot be served conveniently by the Central Business District, and to provide retail and business services in locations within the City that are appropriate for extensive outdoor storage and auto-related and commercial uses. These purposes are accomplished by:

(a) Providing a wide range of the retail, recreation, and business services than are found in neighborhood business areas;

(b) Allowing for commercial uses with extensive outdoor storage or auto-related and industrial uses; and

(c) Limiting residential, institutional, personal services and office to those necessary to directly support commercial activity.

(2) Use of this zone is appropriate in commercial areas that are designated by the Comprehensive Plan and are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services.

(3) Subject to the requirements of WMC 21.08.070(B), the location and operation of sexually oriented businesses within the General Business zone is consistent with the purposes of that zone. (Ord. 295 § 4, 2001; Ord. 267 § 13, 2000; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.110 Central Business District.

(1) The purpose of the Central Business District (CBD) zone is to provide for the broadest mix of comparison retail, higher density residential (R-12 through R-48), service and recreation/cultural uses with compatible storage and fabrication uses, serving regional market areas and offering significant employment and housing opportunities. These purposes are accomplished by:

(a) Encouraging compact development that is supportive of transit and pedestrian travel, through higher nonresidential building heights and floor area ratios than those found in other business areas;

(b) Allowing for outdoor sales and storage, regional shopping areas and limited fabrication uses; and

(c) Concentrating large scale commercial and office uses to facilitate the efficient provision of public facilities and services.

(2) Use of this zone is appropriate in the urban center as designated by the Comprehensive Plan that is served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services. (Ord. 426 § 3, 2006; Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.120 Office zone.

(1) The purpose of the Office zone (O) is to provide for pedestrian and transit-oriented high-density employment uses together with limited complementary retail and higher density residential development in locations where the full range of commercial activities is not desirable. These purposes are accomplished by:

(a) Allowing for uses that will take advantage of pedestrian-oriented site and street improvement standards;

(b) Providing for higher building heights and floor area ratios than those found in the GB zone;

(c) Reducing the ratio of required parking to building floor area;

(d) Allowing for on-site convenient daily retail and personal services for employees and residences; and

(e) Excluding auto-oriented, outdoor or other retail sales and services which do not provide for the daily convenience needs of on-site and nearby employees or residents.

(2) Use of this zone is appropriate in office areas designated by the Comprehensive Plan which are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.130 Industrial zone.

(1) The purpose of the Industrial zone (I) is to provide for the location and grouping of industrial enterprises and activities involving manufacturing, assembly, fabrication, processing, bulk handling and storage, research facilities, warehousing and heavy trucking. It is also a purpose of this zone to protect the industrial land base for industrial economic development and employment opportunities. These purposes are accomplished by:

(a) Allowing for a wide range of industrial and manufacturing uses;

(b) Establishing appropriate development standards and public review procedures for industrial activities with the greatest potential for adverse impacts; and

(c) Limiting residential, institutional, service, office and other nonindustrial uses to those necessary to directly support industrial activities.

(2) Use of this zone is appropriate in industrial areas designated by the Comprehensive Plan which are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services.

(3) Subject to the requirements of WMC 21.08.070(B), the location and operation of sexually oriented businesses within the Industrial zone is consistent with the purposes of that zone. (Ord. 295 § 4, 2001; Ord. 267 § 14, 2000; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.140 High Density Residential (R-48)/Office zone.

The purposes of the High Density Residential (R-48)/Office zone are to provide for high-density development that meets the housing goals of the Comprehensive Plan and to provide additional land for office developments. Properties shall develop with residential densities of R-48 (48 units per

acre) or with a minimum number of dwelling units, as specified by the Comprehensive Plan. In addition, properties with this zone designation shall also provide office space. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.150 Park.

The purpose of the Park zone (P) is to provide opportunities for public parks and other recreation facilities, such as playgrounds, trails, publicly accessible open space, or as meet the definition of parks in WMC 21.06.428. Only facilities providing such public recreation shall be allowed to locate in the Park zones. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.160 Map designation – Special district overlay.

The purpose of the special district overlay designation is to carry out Comprehensive Plan policies that identify special opportunities for achieving public benefits by allowing or requiring alternative uses and development standards that differ from the general provisions of this title. Special district overlays are generally applied to a group of individual properties or entire planning subareas. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.170 Map designation – Newly annexed territory.

Unless preannexation zoning is approved, all newly annexed territory shall be designated R-1 until the zoning map is amended pursuant to WMC 21.04.190 and the annexed territory is classified in conformance with the City of Woodinville Comprehensive Plan. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.180 Map designation – Undesignated property.

All property not designated by the zoning map shall be designated R-1. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

21.04.190 Zoning maps and boundaries.

(1) The location and boundaries of the zones defined by this chapter shall be shown and delineated on a zoning map adopted by ordinance.

(2) Changes in the boundaries of the zones shall be made by ordinance adopting or amending the zoning map. (Ord. 295 § 4, 2001; Ord. 242 § 1, 1999; Ord. 175 § 1, 1997)

Chapter 21.08

PERMITTED USES

Sections:

- 21.08.010 Establishment of uses.
- 21.08.020 Interpretation of land use tables.
- 21.08.030 Residential land uses.
- 21.08.040 Recreational/cultural land uses.
- 21.08.050 General services land uses.
- 21.08.055 Institutional land uses.
- 21.08.060 Business services land uses.
- 21.08.070 Retail land uses.
- 21.08.080 Manufacturing land uses.
- 21.08.090 Resource land uses.
- 21.08.100 Regional land uses.

21.08.010 Establishment of uses.

The use of a property is defined by the activity for which the building or lot is intended, designed, arranged, occupied, or maintained. The use is considered permanently established when that use will or has been in continuous operation for a period exceeding 60 days. A use which will operate for less than 60 days is considered a temporary use, and subject to the requirements of Chapter 21.32 WMC. All applicable requirements of this code, or other applicable State or Federal requirements, shall govern a use located in the City of Woodinville. (Ord. 324 § 1, 2002; Ord. 304 § 1, 2001; Ord. 175 § 1, 1997)

21.08.020 Interpretation of land use tables.

(1) The land use tables in this chapter determine whether a specific use is allowed in a zone district. The zone district is located on the vertical column and the specific use is located on the horizontal row of these tables.

(2) If no symbol appears in the box at the intersection of the column and the row, the use is not allowed in that district, except for certain temporary uses.

(3) If the letter "P" appears in the box at the intersection of the column and the row, the use is allowed in that district subject to the review procedures specified in Chapter 21.42 WMC and the general requirements of the code.

(4) If the letter "C" appears in the box at the intersection of the column and the row, the use is allowed subject to the conditional use review procedures specified in Chapter 21.42 WMC and the general requirements of the code.

(5) If the letter "S" appears in the box at the intersection of the column and the row, the regional use is permitted subject to the special use permit

review procedures specified in Chapter 21.42 WMC and the general requirements of the code.

(6) If a number appears in the box at the intersection of the column and the row, the use may be allowed subject to the appropriate review process indicated above, the general requirements of the code and the specific conditions indicated in the development condition with the corresponding number immediately following the land use table.

(7) If more than one letter-number combination appears in the box at the intersection of the column and the row, the use is allowed in that zone subject to different sets of limitation or conditions depending on the review process indicated by the letter, the general requirements of the code and the specific conditions indicated in the development condition with the corresponding number immediately following the table.

(8) All applicable requirements shall govern a use whether or not they are cross-referenced in a section.

(9) Only public parks or recreational facilities shall be allowed to locate in the Park zone (P). (Ord. 324 § 1, 2002; Ord. 304 § 1, 2001; Ord. 175 § 1, 1997)

21.08.030 Residential land uses.

A. RESIDENTIAL LAND USES

KEY

P – Permitted Use

C – Conditional Use

S – Special Use

Z O N E	RESIDENTIAL				COMMERCIAL/INDUSTRIAL/PUBLIC							
	L O W D E N S I T Y	M O D E R A T E D E N S I T Y	M E D I U M D E N S I T Y	H I G H D E N S I T Y	N E I G H B O R S H O O D	B U S I N E S S	T R A N S I T I O N A L	B I G B O X O F I C E S A L S	C O M M E R C I A L B U S I N E S S A L S	O F F I C E	I N D U S T R I A L	P U B L I C U T I L I T Y
	R1-4	R5-8	R9-18	R19+	NB	TB	GB		CBD	O	I	P/I
	P, C19	P, C19	P									
	P10	P10	P10	P10								
	C10, 12	C7, 10, 12	P	P		P20			P	P18		
		P11	P	P		P20			P			
		P	P						P			
		P11	P	P					P			
	C15	C15	P15	P15				P15			P15	
	C2	C2	P2	P2				P2		P2	P13	
	P3	P3	P3	P3				P3			P16	
	P	P	P	P				P				
	C	C	C	C								
	P6	P6	P6					P P6				
								P4			P17	
								P14				

GENERAL CROSS REFERENCES: Land Use Table Instructions, see WMC 21.02.070 and 21.08.020
 Development Standards, see Chapters 21.12 through 21.30 WMC
 General Provisions, see Chapters 21.32 through 21.38 WMC
 Application and Review Procedures, see Chapters 21.40 through 21.44 WMC
 Tourist District Overlay Regulations, see WMC 21.38.065
 R-48/O regulations, see WMC 21.38.030
 (*) Definition of this specific Land Use, see Chapter 21.06 WMC

B. Development Conditions.

- (1) Reserved.
- (2) Only as an accessory to a school, college/university, church, or fire station.
- (3)(a) Accessory dwelling units:
 - (i) Only one accessory dwelling per lot;
 - (ii) The primary residence or the accessory dwelling unit shall be owner occupied;
 - (iii) If the accessory dwelling unit is a separate structure, the accessory dwelling unit shall not be larger than 50 percent of the living area of the primary residence;
 - (iv) One additional off-street parking space is provided; and
 - (v) The accessory dwelling unit shall be converted to another permitted use or shall be removed if one of the dwelling units ceases to be owner occupied.
- (b) Accessory Aircraft. One single or twin engine general aviation aircraft shall be permitted only on lots which abut, or have a legal access which is not a public right-of-way to, a waterbody or landing field, provided:
 - (i) No aircraft sales, service, repair, charter or rental;
 - (ii) No storage of aviation fuel except that contained in the tank or tanks of the aircraft; and
 - (iii) Storage hangars shall not exceed 20 feet in height above average finished grade or have a gross area exceeding 3,000 square feet.
- (4) Only as an accessory use to an institution, school, public agency, church, synagogue, temple, or nonprofit community organization.
- (5) Reserved.
- (6) Only as an accessory to the permanent residence of the operator, provided:
 - (a) Serving meals to paying guests shall be limited to breakfast;
 - (b) The number of guest rooms shall not exceed three; and
 - (c) The fee owner of the residence serving as a bed and breakfast must reside on the premises.
- (7) A conditional use permit is not required if the townhomes are approved through subdivision review or if the project is in the R-8 zone.
- (8) Home occupations are subject to the requirements and standards contained in WMC 21.30.040.
- (9) Home industries are subject to the requirements and standards contained in WMC 21.30.050.

(10) Townhomes and duplexes must be compatible in design, height, color, style, and materials with existing neighborhood.

(11) Permitted only in the R-8 zone.

(12) Permitted only in the R-4 and R-6 zones, on parcels where protection of critical areas prohibit traditional single-family development.

(13) Only as an accessory to a public school.

(14) Also permitted in the Tourist District. See WMC 21.38.065.

(15) The number of occupants shall not exceed the occupant load of the structure, calculated as provided in the 1994 International Building Code, Section 1002, or as may be hereafter amended.

(16) Only as an accessory to a permitted use.

(17) Only as an accessory to an institution, school, or public agency.

(18) Limited to current location. No new townhomes are permitted in the office zone except on the site currently containing townhomes on January 1, 2002.

(19) A conditional use permit is required for a single-family structure exceeding 8,500 gross square feet in the R-1 through R-6 zones.

(20) Residential development is not permitted on the ground floor and is only permitted as part of a development that integrates residential with tourist-oriented business development and is conditioned through a development agreement with the City that ensures a City-approved economic analysis will be provided and the proposed mixed-use development meets the vision and goals of the Tourist District Master Plan. No more than 25 percent of the entire area development may include residential uses. No direct residential dwelling unit entrances or exits may be permitted onto NE 148th Avenue NE, NE 145th Street, or Woodinville-Redmond Road. (Ord. 428 § 5, 2006; Ord. 379 § 14, 2004; Ord. 347 § 9, 2003; Ord. 326 § 7, 2002; Ord. 324 § 1, 2002; Ord. 304 § 1, 2001; Ord. 295 § 2, 2001; Ord. 242 § 3, 1999; Ord. 194 § 3, 1997; Ord. 175 § 1, 1997)

Appendix F

Rezone Criteria WMC 21.44.070

Appendix F

Chapter 21.44

DECISION CRITERIA

Sections:

- 21.44.010 Purpose.
- 21.44.020 *Reserved.*
- 21.44.030 Temporary use permit.
- 21.44.040 Variance.
- 21.44.050 Conditional use permit.
- 21.44.060 Special use permit.
- 21.44.070 Zone reclassification.
- 21.44.080 Home occupation permit.
- 21.44.090 Home industry permit.

21.44.010 Purpose.

The purposes of this chapter are to allow for consistent evaluation of land use applications and to protect nearby properties from the possible effects of such requests by:

- (1) Providing clear criteria on which to base a decision;
- (2) Recognizing the effects of unique circumstances upon the development potential of a property;
- (3) Avoiding the granting of special privileges;
- (4) Avoiding development which may be unnecessarily detrimental to neighboring properties;
- (5) Requiring that the design, scope and intensity of development is in keeping with the physical aspects of a site and adopted land use policies for the area; and
- (6) Providing criteria which emphasize protection of the general character of neighborhoods. (Ord. 175 § 1, 1997)

21.44.020 *Reserved.*

(Ord. 175 § 1, 1997)

21.44.030 Temporary use permit.

A temporary use permit shall be granted by the Planning Director, only if the applicant demonstrates that:

- (1) The proposed temporary use will not be materially detrimental to the public welfare;
- (2) The proposed temporary use is compatible with existing land use in the immediate vicinity in terms of noise and hours of operation;
- (3) The proposed temporary use, if located in a resource zone, will not be materially detrimental to the use of the land for resource purposes and will provide adequate off-street parking if necessary to protect against compacting soils;

(4) Adequate public off-street parking and traffic control for the exclusive use of the proposed temporary use can be provided in a safe manner; and

(5) The proposed temporary use is not otherwise permitted in the zone in which it is proposed. (Ord. 175 § 1, 1997)

21.44.040 Variance.

A variance shall be granted by the City's Hearing Examiner, only if the applicant demonstrates all of the following:

- (1) The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;
- (2) The variance is necessary because of the unique size, shape, topography, or location of the subject property;
- (3) The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;
- (4) The need for the variance is not the result of deliberate actions of the applicant or property owner;
- (5) The variance does not create health and safety hazards;
- (6) The variance does not relieve an applicant from any of the procedural provisions of this title;
- (7) The variance does not relieve an applicant from any standard or provision that specifically states that no variance from such standard or provision is permitted;
- (8) The variance does not allow establishment of a use that is not otherwise permitted in the zone in which the proposal is located;
- (9) The variance does not allow the creation of lots or densities that exceed the base residential density for the zone;
- (10) The variance is the minimum necessary to grant relief to the applicant;
- (11) The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities; and
- (12) The variance does not relieve an applicant from any provisions of Chapter 21.24 WMC, Environmentally Sensitive Areas, except for the required buffer widths set forth in WMC 21.24.270, 21.24.300, 21.24.310, or 21.24.350. (Ord. 175 § 1, 1997)

(3) The Hearing Examiner shall review and make decisions based upon information contained in the written appeal and the record.

(4) The Hearing Examiner shall render a decision within 10 working days of the closing of hearing.

(5) The Hearing Examiner's decision shall be final unless appealed to Superior Court under the provisions of Chapter 2.30 WMC. (Ord. 175 § 1, 1997)

21.42.100 Hearing Examiner review – Zone reclassification, variances, special use permits and conditional use permits referred by the Planning Director.

Applications for zone reclassification, special use permits, variances and conditional use permits referred by the Planning Director shall be reviewed by the Hearing Examiner subject to the notice procedures set forth in Chapter 17.11 WMC and applicable criteria set forth in Chapter 21.44 WMC. (Ord. 175 § 1, 1997)

21.42.110 Hearing Examiner review – Decision final unless appealed or challenged.

(1) The decision of the Hearing Examiner regarding variances, special use permits and conditional use permits shall be final unless the applicant or an adverse party files an appeal to the City Council pursuant to Chapter 2.30 WMC and in accordance with Chapter 17.17 WMC.

(2) The decision of the Hearing Examiner regarding zone reclassifications shall be in the form of a recommendation to the City Council for passage of the appropriate ordinance. The Hearing Examiner shall hold the open record hearing pursuant to WMC 17.07.030, Project permit application framework (Type III).

(3) Prior to an appeal hearing by the City Council, the Planning Director shall mail a notice of the appeal or challenge to all parties of record pursuant to WMC 17.17.040(1)(f).

(4) The City Council's decision shall be final unless appealed to Superior Court under the provisions of Chapters 2.30 and 17.17 WMC. (Ord. 175 § 1, 1997)

21.42.120 Expiration.

(1) Land use decisions that have been reviewed and approved pursuant to WMC 21.42.040 and 21.42.110 shall expire within two years of approval, during which all construction of the project must be completed; provided, that condi-

tional use approval for schools shall expire within five years.

(2) The expiration date may be extended one additional year by the Planning Director if, prior to the expiration date then in effect, the applicant demonstrates all of the following:

(a) That the applicant has made significant progress toward completion of the project;

(b) That failure to complete the project in a timely manner was beyond the applicant's control; and

(c) That expiration would cause the applicant to endure a significant financial hardship.

(3) For the purpose of this section, approval shall be the date the land use decision is approved, issued or granted by the Planning Director or the Hearing Examiner, whichever is later.

(4) This section shall apply retroactively to land use decisions approved pursuant to WMC 21.42.040 and 21.42.110 prior to December 14, 2002; provided, that for the purposes of determining the retroactive expiration date, the two-year period shall begin to run from December 14, 2002.

(5) This section shall not apply to zone reclassifications. (Ord. 326 § 14, 2002; Ord. 175 § 1, 1997)

21.42.130 Establishment of hearing rules.

The Hearing Examiner shall establish rules governing the conduct of public hearings before the Hearing Examiner and shall be in accordance with Chapters 17.15 and 17.17 WMC. (Ord. 175 § 1, 1997)

21.42.140 Records.

The Department shall maintain public records for all permit approvals and denials containing the following information:

(1) Application documents;

(2) Tape recorded verbatim records of required public hearing;

(3) Written recommendations and decisions for proposed actions;

(4) Ordinances showing final City Council actions;

(5) Evidence of notice;

(6) Written comments received; and

(7) Material submitted as exhibits. (Ord. 175 § 1, 1997)

21.44.050 Conditional use permit.

A conditional use permit shall be granted by the Planning Director or the City's Hearing Examiner, only if the applicant demonstrates that:

(1) The conditional use is designed in a manner which is compatible with the character and appearance with the existing or proposed development in the vicinity of the subject property;

(2) The location, size and height of buildings, structures, walls and fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;

(3) The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property;

(4) Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title;

(5) The conditional use is not in conflict with the health and safety of the community;

(6) The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood; and

(7) The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities. (Ord. 175 § 1, 1997)

21.44.060 Special use permit.

(1) A special use permit shall be granted, or, if applicable, conditionally granted, by the City's Hearing Examiner; provided, that:

(a) The applicant can demonstrate that:

(i) The characteristics of the special use will not be unreasonably incompatible with the types of uses permitted in surrounding areas;

(ii) The special use will not materially endanger the health, safety and welfare of the community;

(iii) The special use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;

(iv) The special use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts;

(v) The location, size and height of buildings, structures, walls and fences, and screen-

ing vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties;

(vi) The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title;

(vii) Where applicable, the special use meets the requirements of the Comprehensive Plan regarding the siting process for essential public facilities; and

(b) Subject to public notice requirements of WMC Title 17, the Hearing Examiner shall make a threshold determination on whether the proposal presents siting difficulties, and shall consider public comments in making that determination.

(2) With respect to essential public facilities, the provisions and decisional criteria of Chapter 21.25 WMC shall supersede the provisions of this section to the extent of any conflict or inconsistency. (Ord. 425 § 6, 2006; Ord. 325 § 2, 2002; Ord. 175 § 1, 1997)

21.44.070 Zone reclassification.

A zone reclassification shall be granted only if the applicant demonstrates that the proposal is consistent with the Comprehensive Plan and applicable functional plans at the time the application for such zone reclassification is submitted, and complies with the following criteria:

(1) There is a demonstrated need for additional zoning as the type proposed.

(2) The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.

(3) The property is practically and physically suited for the uses allowed in the proposed zone reclassification. (Ord. 400 § 20, 2005; Ord. 175 § 1, 1997)

21.44.080 Home occupation permit.

A home occupation permit shall be granted by the Planning Director only if the applicant demonstrates that the home occupation will be conducted in compliance with the provisions of WMC 21.30.040. (Ord. 175 § 1, 1997)

21.44.090 Home industry permit.

A home industry permit shall be granted by the Planning Director only if the applicant demonstrates that the home industry will be conducted in compliance with the provisions of WMC 21.30.050. (Ord. 175 § 1, 1997)

Appendix G

Excerpts from FEIS

Appendix G

1.2 OBJECTIVE OF THE PROPOSED ACTION

The applicant's primary objective for the proposal is to receive a rezone from R-1 (one residential dwelling unit per acre) to R-4 (four units per acre) density and to create two subdivisions with single-family zoned lots for the construction of new single-family residences and supporting infrastructure. Wood Trails and Montevallo, together, comprise one of the largest remaining areas in the R-1 designation of single-family residential, which is considered low density development in the Comprehensive Plan.

1.3 PROPOSED ACTION AND ALTERNATIVES

The Final EIS evaluates in detail the Proposed Action, two alternative development scenarios for comparison against the Proposed Action and the No Action Alternative. These alternatives are summarized below. The EIS is based on the preliminary plat applications, with rezone requests, submitted to the City by the developer. Beyond those necessary to evaluate the proposal in this Final EIS, the details of the development proposals are subject to separate and additional review under the subdivision application process subsequent to completion of the Final EIS.

1.3.1 Proposed Action

The applicant's proposal consists of developing two residential subdivisions, known as Wood Trails and Montevallo. Both subdivisions would be built on properties located in the northeastern part of the City, within the West Wellington neighborhood, on land currently zoned as R-1. Figure 1-1 is an aerial photograph showing the location of the Wood Trails and Montevallo sites.

The proposal for Wood Trails (City File No.PPA2004054) is to rezone a 38.7-acre property to R-4 and subdivide the property into 66 single-family residential lots. The Wood Trails property is located at the present terminus of NE 202nd Street, NE 201st Street, NE 198th Street and NE 195th Street, west of 148th Avenue NE. It is in the NE ¼ of Section 3, Township 26 North, Range 5 East WM, King County. The Wood Trails property originally acquired by the applicant included 50.5 acres and extended north to the King-Snohomish County line and NE 205th Street [extended]. When the applicant submitted the preliminary plat application for Wood Trails in June 2004, the applicant indicated that it planned to exclude, through a boundary line adjustment (BLA), an 11.8-acre parcel at the north end of the original Wood Trails property from the subdivision proposal. The site plan and other graphics provided in the EIS for this site are based on the information contained in the preliminary plat application, and apply to the 38.7-acre property proposed for development as the Wood Trails subdivision. The City approved the BLA (2004-063) subsequent to the filing of the application, and the BLA was recorded. No development plans for the adjacent 11.8-acre parcel were known at the time of publication of the FEIS.

The Wood Trails site is located on a west-sloping hillside with an approximate 180-foot drop going from east to west. The eastern side of the site includes relatively flat areas interspersed with several steep-sided ravines and erosion hazard critical areas. A small stream is located approximately 100 feet north of the plat boundary (off-site) at the bottom of a steep-sided, forested ravine. The entire site is forested and numerous informal trails and footpaths cross the site, including a utility corridor feature extending from NE 201st Street across the site to the west. The site is bordered by a single-family residential area to the east and an industrial area to the west. The north edge of the Wood Trails site abuts a small tract of forest that is located near the southwest corner of the Wellington Hills Golf Course. The proposed Wood Trails subdivision would include streets, public water supply and sanitary sewer service, and stormwater management facilities.

Montevallo (City File No.PPA2004093) is a proposal to rezone to R-4 and subdivide a 16.48-acre property into 66 single-family residential lots. Montevallo is located west of 156th Avenue NE, directly south of the King-Snohomish County line and the Wellington Hills Golf Course. It is in the NW ¼ of Section 2, Township 26 North, Range 5 East WM, King County. The Montevallo site is surrounded by suburban residential lots on both the south and west sides. The east side of the site borders 156th Avenue NE (also known as the Boston Road). The north side of the Montevallo site abuts an approximately 20-acre forested area on the east side of the Wellington Hills Golf Course. The site is predominantly cleared and developed for low-density, single-family use, with 4 single-family residential homes on the east side of the site, and a single-family home near the west side of the site.

There is also a large barn located just south of the western home. The extreme western portion of the site includes a forested wetland and a small portion of forested upland. The rest of the site, excluding the wetland on the west side of the site, is pasture that has been used by several horses. The proposed Montevallo subdivision would include streets, public water supply and sanitary sewer service, and stormwater management facilities.

1.3.2 Alternatives to the Proposed Action

In addition to the proposal, three alternatives are considered in detail in the Final EIS: development of both sites at the existing R-1 zoning with individual on-site septic systems; development of both sites at the proposed R-4 zoning, with attached housing (townhomes) on the Wood Trails site and single-family lots on the Montevallo site; and a No-Action alternative. Key characteristics of these alternatives are summarized below.

- The R-1 Zoning Alternative would include the construction of 23 single-family dwelling units on the Wood Trails site and 14 single-family dwelling units on the Montevallo site. Infrastructure for the subdivisions would be similar to the Proposed Action, except all residences on both sites would be served by individual, on-site septic systems.
- The Attached Housing Alternative would consist of 85 townhome units on the Wood Trails site and 47 single-family dwelling units on the Montevallo site. Infrastructure for the subdivisions would be essentially the same as for the Proposed Action, including public sewer service to both sites.
- As is required by the State Environmental Policy Act (SEPA), a No Action Alternative is considered in this Final EIS. Under this alternative, no new development would occur on the subject properties and the existing conditions would be maintained for the near term. This alternative does not preclude future development of the subject properties by other developers/applicants in the future.

1.4 SUMMARY OF IMPACTS, MITIGATION AND SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS

Through the public scoping process, the City of Woodinville determined that the EIS should include detailed impact analysis for six elements of the environment: Earth, Water, Plants and Animals, Land Use, Transportation and Public Services. Chapter 3 of the EIS provides detailed information on the affected environment (existing conditions), expected impacts and corresponding mitigation measures for these elements.

1.4.1 Probable Environmental Impacts

An EIS is focused on "probable significant adverse environmental impacts" as those terms are defined by SEPA. While a wide range of impacts could potentially occur in connection with any proposal, not all impacts are considered *probable* ("likely to occur" per WAC 197-11-782) or *significant* ("more than a moderate adverse impact" per WAC 197-11-794). The following table identifies the impacts that are considered likely to occur as a result of the proposal or the alternatives. Based on the analysis in the EIS, some of these impacts are considered significant in the context of SEPA. All likely impacts could be mitigated by a redesign—by adopted City regulations and/or by elements incorporated into the design of the proposal—to a level that is considered less than significant. Mitigation, as defined by SEPA, includes actions that can avoid, minimize, rectify, reduce, compensate for or monitor impacts (WAC 197-11-768).

However, some adverse impacts are considered "unavoidable" because they reflect a type of change that is inherent in the proposed development regardless of how it is designed. Urban development, for example, unavoidably entails clearing of vegetation, creation of impervious surfaces, and conduct of human activities. This category of impacts is identified for each element of the environment in the EIS and is summarized in Section 1.5 below.

1.4.2 Comparison of Alternatives, Impacts, Potential Mitigation and Significant Unavoidable Adverse Impacts

Tables 1.4-1 and 1.4-2 identify and compares the level of impacts for the range of alternatives on for each element of the environment, potential mitigation for those impacts and significant unavoidable adverse impacts.

Table 1.4-1 Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts			
Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
Earth (Section 3.1) Proposed Action	<p>On-site investigations do not indicate a history or likelihood of substantial slope-instability on the site. The subsurface data obtained from the test sites and reconnaissance of the steep-slope areas indicates the overall stability of the site appears good. Only limited evidence of past slope instability exists. Two distinct areas within the site near the northern edge of the site display evidence of historic landslides and should be considered marginally stable to unstable.</p> <p>Because steeply-sloping ravines occur throughout much of the site, the risk for erosion and shallow debris flow activity is elevated compared to areas without these slope conditions. Due to the very dense glacial deposits underlying the site, as demonstrated by the subsurface conditions encountered at the test sites, there is a low susceptibility to large-scale, deep-seated slope movements at the site. If the slopes on the site were inherently unstable, it is reasonable to conclude that erosion and landslide activity from the historic disturbance would be much more extensive.</p> <p>Construction of utilities, storm water dispersion trenches, trails and excavation of a detention pond on the steep slope and/or erosion hazard areas has been proposed by the applicant and impacts could occur to the stability of those slopes.</p> <p><u>Limitations to Proposed Facilities.</u> Although construction of utilities, storm drainage discharge systems and excavation of a detention pond on the steep slope and/or erosion hazard areas has been proposed by the applicant, the following select performance standards from WMC 21.24.310 are anticipated to be limitations to these construction activities in the erosion and possible landslide hazard areas. There are exceptions allowed for many of the standards (see complete standards in WMC 21.24.310), however, the data from the soils and geotechnical</p>	<p>Storm water dispersion trenches, excavation of a detention pond and unnecessary utility construction are not anticipated to be approved (See Limitations to Proposed Facilities) I the Impacts Section. Possible alternatives include:</p> <ol style="list-style-type: none"> A narrow, long detention vault (possible above ground to act as a retaining wall) in place of the pond, All stormwater conveyance via HDPE pipe (or equivalent), including piping in place of dispersion trenches, Narrow trenches, construction during the dry season with special erosion and slide prevention techniques for utilities. Disturbed areas outside of the building and roadway footprint, including the easement area for the sanitary sewer extension, would be re-vegetated following construction. Hire a geotechnical engineer to be on-site during construction activity. <p>In addition, as part mitigation proposed as part of the proposal, the applicant is required to</p>	<p>The primary significant unavoidable adverse impact to earth resources from any of the development alternatives would be related to the surface disturbance on erosion hazard areas and/or steep slopes. From a soil stability standpoint the following create significant adverse impacts:</p> <ul style="list-style-type: none"> Installation of the proposed pond with horizontal encroachment into the hillside of more than 150' and a difference between the bottom of the proposed detention pond and the top of the sequence of rockeries of approximately 60'. Construction of the dispersion trenches Construction of utility trenches Construction of Trails

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
	<p>reports submitted for this EIS tend to support a more conservative approach to construction. Without including the following, significant adverse impact could occur. The applicable WMC standards that would promote less impact are:</p> <ul style="list-style-type: none"> a. A minimum buffer of 50' from the edge of the hazard area. Although this buffer could be reduced with acceptance of the City, the soil reports submitted would support maintaining these buffers at their required distance. Buffers also can be increased to prevent risk of damage. This will be considered at the time of site review, if the proposal is approved. b. The development will not decrease slope stability on adjacent properties. c. Structures and improvements shall minimize alterations to the natural contour of the slope d. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation. e. Removal of vegetation from an erosion hazard area or related buffer is prohibited. f. Utilities lines and pipes shall be permitted in these hazard areas only when the applicant demonstrates that no other practical alternative exists. The line shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Storm water conveyance shall only be allowed through a high-density polyethylene pipe with fuse welded joints or similar product approved by the Director. g. Dispersed discharge upslope of the steep slope onto a low gradient undisturbed buffer only where it can be demonstrated that such discharge will not increase saturation of the slope. 	<p>prepare a Stormwater Pollution Prevention Plan (SWPPP) as a condition of obtaining a construction stormwater permit for the project. A temporary erosion and sedimentation control plan (TESP), designed in accordance with City of Woodinville and Ecology standards, would be a key component of the SWPPP and would be employed during construction. This plan would be prepared in conjunction with the recommendations of the geotechnical reports, so that issues identified in the geotechnical investigation are addressed in the construction plans. Based on the applicable regulatory requirements, the SWPPP will include standard best management practices (BMPs) for minimization of erosion and control of runoff on construction sites.</p>	

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed into the Project	Significant Unavoidable Adverse Impacts
R-1 Zoning Alternative	<p>Under the R-1 Zoning Alternative, the Wood Trails site would be developed with 23 residential building lots, compared to 66 lots for the Proposed Action. Consistent with the existing adjacent residential development, these building lots would utilize septic systems. However, WMC requires developments on lots less than one acre per unit hook up to a sewer that is within 330 feet, which is the case for this proposal.</p> <p>Impacts from this alternative are similar to those of the proposed action, except there would be somewhat less potential for impacts to the erosion prone slopes. Another difference would be the proposed installation of drainfields. The feasibility of utilizing septic systems on this site, and the potential long-term impacts from the septic systems, would need to be further evaluated if this alternative were implemented. The Alderwood soils throughout the site exhibit varying degrees of cementing. In this respect, permeability of the soils would be considered low, and generally not conducive to the use of septic systems.</p>	<p>Mitigation would be the same for this alternative except for the use of septic systems. Use of sewer would mitigate potential system impacts but would increase potential from construction of steep and erosion prone slopes.</p>	<p>Mitigation would be the same except for sewer trenching.</p>
Attached Housing Alternative	<p>The Attached Housing Alternative would include an 85-unit multi-family development consisting of several buildings and associated roadway areas on the Wood Trails site. Overall, the extent of construction disturbance and developed facilities on the site would be less than for the Proposed Action and the R-1 Zoning Alternative. However, concerns still exist about construction on the steep and/or erosion hazard areas with regards to location and type of detention facility, placement of dispersion trenches, and installation of utilities.</p>	<p>The same discussion provided in the Proposed Action and the R-1 Alternatives related to "limitations to the Proposed Facilities" also applies to this Alternative. In summary, proposed storm water dispersion trenches, excavation of a detention pond and unnecessary utility construction are not anticipated to be approved as proposed. See possible alternatives in the Proposed Action discussion.</p>	<p>Mitigation would be the same as the other alternatives.</p>
No Action Alternative	<p>No development activity would occur on the site.</p>	<p>None would occur.</p>	<p>Slopes would be maintained in a forested state and would be more stable than under the development alternatives.</p>

Summary

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed into the Project	Significant Unavoidable Adverse Impacts
Water (Section 3.2) Proposed Action	<p>Construction activity on the Wood Trails site would create the potential for short-term impacts to water resources, primarily through sedimentation that could result from erosion of disturbed surfaces. Accidental releases of contaminants such as fuels or other petroleum products are also typical concerns associated with construction activities. Erosion and sediment control at construction sites is critical because erosion rates on uncontrolled construction sites are many times higher than erosion rates from undeveloped land (King County 2005). Implementing erosion and sediment control measures at construction sites can limit rates of erosion and transport of sediment to off-site surface waters to acceptable levels, however.</p> <p>Determination of the expected water resource impact level from construction of the subdivision is based on the regulatory approach of the agencies with permit jurisdiction, which in this case are Ecology and the City.</p> <p>The potential for the Wood Trails development to alter groundwater conditions would be determined by the relationship of the development plan to the recharge characteristics of the site and groundwater levels and flow conditions. Recharge on the site is limited by glacial till. Recharge occurs primarily in advance outwash deposits; this condition occurs in a roughly rectangular lobe within the northeastern portion of the site and on the slopes in the southwestern part of the site. Recharge from these areas appears to supply only the shallow aquifer. Development activities for the Proposed Action, including excavation activities, would occur well above the level of the deep aquifer and would have no effect on it.</p>	<p>Construction of the Wood Trails subdivision would require the applicant to obtain a temporary National Pollutant Discharge Elimination System (NPDES) permit, under the Washington Department of Ecology's general permit for construction stormwater, requiring a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP must specify the control measures applied during construction to minimize discharge of pollutants to runoff from the site. The project must also meet the City's construction stormwater requirements, which incorporate the requirements of the King County Surface Water Design Manual (KCSWDM) and Ecology's stormwater management requirements.</p> <p>Stormwater discharges from construction sites are subject to State water quality standards. Ecology's construction stormwater general permit does not authorize violations of the standards, even on a temporary basis.</p> <p>The <i>Stormwater Management Manual for Western Washington</i> (Ecology (2005c)) presents documentation that "minimization of stormwater flows, prevention of soil erosion, capture of water-borne sediment that has been unavoidably released from exposed soils, and protection of water quality from on-site pollution sources are all readily achievable when the proper BMPs are planned, installed and properly maintained." The <i>Manual</i> indicates that Ecology expects that use of the</p>	<p>The modeling analysis demonstrates that the proposed Wood Trails development would cause essentially no change in discharge rates or patterns over most of the range of flow conditions, and only minimal change at flow conditions with the highest return intervals. Therefore, impacts of the Proposed Action on water quantity characteristics would be insignificant.</p> <p>Because the Wood Trails project would employ water quality treatment measures consistent with the City and KCSWDM requirements, the discharge from those facilities is presumed to be in compliance with water quality standards and adequately protective of downstream receiving waters. Long-term water quality impacts from the project would therefore be insignificant.</p> <p>Provided that the storm water facilities mentioned as needed under the <u>Limitations</u> to <u>Proposed Facilities</u> in the Earth section are met, no significant adverse impacts are expected from the project on water resources.</p>

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
		<p>"appropriate BMPs outlined in this volume ... will result in compliance with water quality standards." Furthermore, the <i>Manual</i> explains that RCW Chapter 90.48 directs that <i>compliance with water quality standards shall be presumed</i> (emphasis added) when the permittee is in compliance with permit conditions and following approval of its stormwater management practices, unless site specific information demonstrates otherwise.</p> <p>The City's stormwater management requirements for new development incorporate those of the King County Surface Water Design Manual (KCSWDM). Based on the regulations in force at the time the plat applications were filed, the City's review of the Proposed Action is based on the 1998 Surface Water Design Manual (King County 1998). (The requirements set forth in the 1998 KCSWDM are very similar to those in the updated 2005 KCSWDM, which was modified for consistency with the 2005 Ecology manual.)</p> <p>Based on the geographic location of the Wood Trails site within an identified stream protection area, the project is subject to the Level 1 and Level 2 flow control standards. The Level 1 standard requires the developed-condition peak discharge rates to match those of the existing site conditions for 2-year and 10-year return periods. Level 1 flow control is intended to protect the flow capacity and limit increased erosion within the conveyance system downstream of the project. The Level 2 flow control standard also adds the</p>	

Summary

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
		<p>requirement that developed-condition peak discharge durations match the pre-developed discharge durations for all discharge rates from 50 percent of the 2-year peak flow up to the full 50-year peak flow. This requirement is intended to prevent increased erosion or stream channel instability by limiting the amount of time that developed flows exceed the erosion-causing threshold (which is 50 percent of the 2-year peak flow) to the same duration as under pre-developed conditions.</p> <p>Changes in flow rates for downstream runoff also raise the potential for impacts to the stormwater drainage systems serving the industrial properties to the west of the Wood Trails site. To avoid this potential impact, the large majority of the runoff from the developed area of the site would be collected within on-site drainage systems and routed around the downstream development</p>	
R-1 Zoning Alternative	The water resource impacts of developing the Wood Trails site at 1-acre densities would generally be the same as those identified for the Proposed Action with respect to type, timing and duration. The area of ground disturbance during construction would be slightly less, and short-term impacts during construction would likewise be insignificant.	Mitigation would be similar those of the Proposed Action, including those suggest design mitigations listed in the <u>Limitations to Proposed Facilities</u>	Same as proposed.
Attached Housing Alternative	Same as the Proposed Action and the R-1 Alternative.	Mitigation would be similar those of the Proposed Action and the R-1 Alternative, including those suggest design mitigations listed in the <u>Limitations to Proposed Facilities</u>	Same as proposed.
No Action Alternative	Hydrology, water quantity and water quality are expected to remain the same.	N/A	There would be no significant impacts from the No Action Alternative.

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
Plants and Animals (Section 3.3)	<p>The Wood Trails site is a heavily forested area that consists of a mix of deciduous and coniferous trees. The Wood Trails site is one of Woodinville's only remaining large contiguous land tracts that is comprised of a deciduous/conifer forest. The heavily forested Wood Trails site is set within a larger patch of forested area, which extends north partially into the Wellington Hills Golf Course, approximately 75 acres in size. As noted above, Wood Trails and the larger forested patch are surrounded by residential and industrial development, a golf course, and associated roads. A large ravine covered with a stump-sprout origin, deciduous overstory of big-leaf maple is located just off-site to the north. The ravine contains a stream that flows to the west, where it enters a large-diameter stormwater conveyance pipe at the eastern edge of an industrial-park property.</p> <p>As indicated in Figure 3.3-1, there is a small off-site wetland located just to the west of the Wood Trails site. No fish-bearing streams are present on the Wood Trails site, although the site occupies headwater and fringe areas of the Little Bear Creek drainage in the overall Lake Washington basin. A small, non-fish-bearing stream passes through a ravine in the undeveloped parcel adjacent to the Wood Trails site on the north.</p> <p>The Wood Trails site has a comparatively high ambient noise level as a result of machinery operation and other activities in the industrial park and traffic on the roadways located to the west (the Woodinville-Snohomish Road and SR 522). The site habitat value in the landscape setting is somewhat limited as a result of the fragmented habitat created by surrounding development. Habitat patch size smaller than 250 acres are generally occupied by small animals with small home ranges, but are not supported by larger animals; site use by the latter animals would be restricted to transient activities.</p> <p>The Wood Trails site has no known recorded rare plant communities or listed plants according to a search of the Washington Natural Heritage Program database conducted by the Washington Department of Natural</p>	<p>Wildlife</p> <p>Species that would be migrating through the site are adapted to and tolerant of narrow corridors and residential settings. Even after project modifications to the site, the functional, vegetated corridor would be as large as a typical urban habitat corridor. Suitable mitigation for impacts to wildlife movement from the Proposed Action or Attached Housing Alternative would be to maintain an unrestricted, vegetated corridor through the west side of the Wood Trails site near the proposed stormwater pond. Fences would not be installed in this area other than as needed to satisfy a potential City requirement to fence the perimeter of the pond. Due to the nature of the steep slopes on the Wood Trails site (see Earth Section 3.1), installation of a narrow vault stormwater system as opposed to an open stormwater pond, would be a better solution for slope stability. It would also provide wider corridors for wildlife movement and reduce the need for native vegetation removal.</p> <p>There would be some loss of wildlife foraging area from the proposed project. Several measures would be used to offset losses of forage trees and improve the remaining habitat for pileated woodpeckers. These include selective snag creation on the 21 acres of remaining open space, through girdling of specific</p>	<p>All of the development alternatives would leave a large portion of the Wood Trails site undeveloped as an NGPA. This contiguous area of at least 21 acres (approximately 57 percent of the site) on the western side of the property would retain the most valuable habitat on the site, particularly for pileated woodpeckers. While removal of the forest on the eastern portion of the site would result in some minor habitat loss (up to 17 acres), these impacts would be minor and pileated woodpecker habitat on the site would remain viable.</p> <p>Nevertheless, some wildlife would unavoidably be displaced by any development on the Wood Trails site. Generally, the species found on the site that would be displaced are common, human-tolerant species that are able to move and adapt to changed conditions; these species would likely move to forested areas to the west and north of the development area. Based on the extent and context, this displacement impact would be insignificant.</p> <p>The Proposed Action would result in the loss of Wetland A on the Wood</p>

Summary

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
	<p>Resources. In addition, there are no known identified or documented uses of the site by any state or federally listed threatened or endangered species, based upon site observations as well as a search of the Priority Habitats and Species Program database.</p> <p>A pair of pileated woodpeckers was observed on the site. Little Bear Creek represents off-site aquatic habitat of local or regional significance with respect to the proposed development. Little Bear Creek is located approximately one-half mile to the west from the Wood Trails site. Little Bear Creek is an important fish-bearing stream that contains most species of salmon and trout.</p> <p>Therefore, the stormwater runoff from the Wood Trails site should have no significant impact on downstream water quality, and no significant adverse effect on aquatic habitat in Little Bear Creek.</p>	<p>trees that would provide good potential snags. Transfer of large woody debris, such as logs and stumps, from clearing operations to the western portion of the site would also provide foraging materials for pileated woodpeckers and other wildlife.</p> <p>Water Resources Potential water resource impacts from the Proposed Action and alternatives are addressed primarily in Water Section 3.2.2. Potential effects on aquatic habitat from water quantity and/or quality changes are also addressed in Section 3.3. The stormwater management system for the Wood Trails project has been designed to maintain existing flow rates and durations from the site. Accordingly, no measurable change to the hydrologic characteristics of Little Bear Creek, the off-site eventual receiving water body, is anticipated as a result of this project (see Section 3.2.2 for more detailed discussion). Habitat for fish and other aquatic organisms in Little Bear Creek would not be adversely affected by water quantity changes associated with the Wood Trails project.</p> <p>The Proposed Action includes</p>	<p>Trails site, due to the proposed stormwater pond that would be placed there. Wetland A is in the only feasible location for the proposed stormwater facility, and represents an unavoidable impact. The applicant would provide mitigation for these impacts by establishing native vegetation on the benches between the rockeries above the stormwater pond, and by enhancing riparian vegetation along a stream north of the development area. The loss of this low-function wetland would be mitigated by the proposed enhancement and the residual impact would not be significant.</p>

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
		<p>extension of public sanitary sewer service to the site. The long-term result of providing sewer service to the area, and the high level of water quality treatment for stormwater runoff from Wood Trails, could be a net improvement in water quality for flows draining to Little Bear Creek. The aquatic habitat in Little Bear Creek could benefit from any such improvement in water quality. Mitigation proposed by the applicant includes native tree and shrub plantings per the City of Woodinville Mitigation Guidelines to restore existing degraded habitat on the extreme west side of the site north of the proposed stormwater pond, localized removal of blackberry vines and installation of native conifers will be conducted through the area of the corridor. This would restore a conifer component in this area and provide greater cover for wildlife using the area. The 5-Year performance standards for the planting areas would be a minimum 80-percent survival rate and a maximum of 10 percent non-native plant cover.</p> <p>Wetland</p> <p>The current Woodinville Municipal Code and the latest Ecology mitigation guidance.</p>	

Summary

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
		<p>document (<i>Guidance on Wetland Mitigation In Washington State Part 1: Laws, Rules, Policies and Guidance Related to Mitigation</i>, April 2004), which is referenced in the WMC, guided development of the mitigation strategy for impacts to Wetland A on the Wood Trails site. A key principle of the WMC and the Ecology guidance is the emphasis on replacing lost wetland functions, with lesser importance placed on replacing wetland acreage. For example, WMC 21.24.350(2) states that "Mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions." WMC 21.24.350(3) states that "Mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement, and shall provide similar wetland functions as those lost." The Ecology guidance states that "The goal is to replace lost wetland functions at a 1:1 ratio..." The WMC does not state that wetland creation is the preferred method of compensation for wetland loss. Instead, WMC 21.24.350(4) states that restoring wetland characteristics to an area that was once a wetland is the first preference, followed by "enhancing significantly degraded wetlands."</p> <p>Enhancement of existing degraded wetlands is an appropriate mitigation strategy when compensating for impacts to small, low-quality wetlands. The proposed impact and mitigation areas are both in the Little Bear Creek Basin, and the wetland proposed for enhancement is a fringe along an unnamed tributary of Little Bear Creek on the adjacent forested property to the north. The proposed</p>	

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
R-1 Zoning Alternative	Overall, the on-site impacts to plants and animals from the R-1 Zoning Alternative would be incrementally less than those identified for the Proposed Action, which would be insignificant.	<p>mitigation would not only provide enhancement of the existing wetland through increasing species diversity and revegetating disturbed areas, but would also benefit the stream and the basin as a whole by increasing stream shading (which reduces water temperature), inputs of organic matter, and future large woody debris recruitment. The low level of function provided by the existing Wetland A would be more than replaced by enhancing a low-diversity, degraded wetland fringing the off-site stream at Ecology's 8:1 mitigation ratio for wetland impacts compensated by wetland enhancement. Accordingly, mitigation for Wetland A would consist of 11,200 square feet of enhancement (see Appendix N). The final enhancement would restore a conifer component to this area, thereby increasing the diversity of plant material and shading of the stream. Flow control and water quality treatment measures incorporated in the drainage system for the project would mitigate</p>	Impacts from this Alternative are expected to be similar to the Proposed Action, and therefore significant adverse impacts are not expected provided that mitigation is included in the design.

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element Alternative	Impacts	Mitigation Measures Designed into the Project	Significant Unavoidable Adverse Impacts
Attached Housing Alternative	This alternative would result in development of 85 townhouse units on the Wood Trails site, within approximately the same overall footprint as the Proposed Action	Because the area disturbed for construction of buildings and infrastructure (including a stormwater detention pond) would be somewhat less than for the Proposed Action (10 acres, rather than 17 acres), the on-site and off-site habitat impacts from this alternative would be reduced compared to the development of 66 single-family lots on this site; impacts would be insignificant in both cases.	Impacts from this Alternative are expected to be similar to the Proposed Action, and therefore significant adverse impacts are not expected provided that mitigation is included in the design.
No Action Alternative	Under this alternative the Wood Trails site would remain undeveloped and the five current residences would remain on the Montevallo site for the foreseeable future. Impacts to plant or animal life resulting from development of subdivisions on these sites would not occur.	N/A	There would be no significant impacts from the No Action Alternative.
Land Use (Section 3.4)			
Proposed Action	<p>The proposed Wood Trails subdivision would result in development of 66 single-family residences, plus the construction of roads, landscaping, and a storm drainage system on the 38.7-acre site. (See Chapter 2 for a full description of the Proposed Action and the alternatives that follow.) The site would generally be converted from undeveloped, to developed for urban-density use. Urban density in the Comprehensive Plan for Low Density is stated to be 1-4 units per acre. A portion of the site, approximately 21 acres, would remain undisturbed; this area would be surrounded by homes and other site development. Because the site is vacant, no existing uses would be displaced. There would be a net decrease in open space and the number of trees on the site. (See Table 2.1-1 for more information about open space before and after development.)</p> <p>In terms of type of land use, the proposed Wood Trails subdivision would be compatible with existing adjacent single-family residential land uses to the north, south, and east of the site in Wellington Hills. The proposed detached single-family structures would be compatible in type and form with the existing adjacent detached single-family structures. However, the Wood Trails subdivision would result in</p>	<p>Additional undeveloped open space could be preserved if an underground vault replaced the open stormwater detention included in the Proposed Action for Wood Trails. The applicant's engineering evaluation of drainage facilities indicated an underground vault would not be feasible or appropriate for the proposal (see discussion in Section 2.1.1).</p> <p>Visual impacts to adjacent residents could be mitigated by increasing the size and/or density of the perimeter buffer or creating additional setbacks along the perimeter to screen the site from nearby views. Also, lower density housing could be constructed on the perimeter of the proposal and a vegetated buffer installed to better match the adjacent properties to provide a perceived "rural" environment in an urban setting.</p>	<p>Under any of the development alternatives, there would be an unavoidable loss of open space, trees and undeveloped land on the two project sites. Based on the level of existing development surrounding the sites and the amount of open space that would remain on the sites, this could be perceived as a significant land-use impact within the neighborhood and adjacent properties. The visual change that would be visible to a limited number of adjacent residences could be mitigated by greater setbacks or buffering along the perimeter of the site and fewer homes on the perimeter. Under the R-1 Zoning Alternative, development densities could be viewed as inconsistent with</p>

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Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
	<p>smaller lots and higher-density development than currently exist in the neighborhood, with a gross density of 1.7 dwelling units per acre and a net density of 6.28 dwelling units/acre within the effective development area of the site (calculated per WMC 20.12.080). The density on the Wood Trails site would contrast with surrounding gross densities which average about 1-2 dwelling units per acre. The proposed homes would be closer together than most homes in the area, which are on larger lots and thus generally spaced farther apart. The form and scale of development would also contrast with surrounding single lot development that was created when the area was within rural King County. In this sense Wood Trails would represent an intensification of the existing land use pattern, i.e. a change from larger-lot, detached single-family homes developed under R-1 zoning to smaller-lot detached single-family homes developed at R-4 density. Densities would generally be characterized as urban in character; however, there is a more "rural" visual image that typifies the neighborhood character. The proposal would not result in significant conflicts with adjacent uses, but could result in conflicts with neighborhood character.</p> <p>There would be a change in character of the site, from undeveloped/wooded to developed/urban residential use. The appearance of the site could change depending on the design. The change would be noticeable from some adjacent residences and the street, but would not be visible from public, off-site locations and would not be experienced by a large number of viewers. The character of the visual change may be perceived to be significant to adjacent neighbors, but would not represent a significant adverse impact in a broader context. Visual impacts to adjacent residents could be mitigated by increasing the size and/or density of the perimeter buffer or creating additional setbacks along the perimeter to screen the site from nearby views.</p> <p>The proposed Wood Trails development is less intense than the existing light industrial and related uses in the North Industrial neighborhood west of the site. Because there is significant topographic separation and horizontal distance between the proposed development area and the existing industrial uses, and no direct access between the two areas, this</p>	<p>A list of policies, codes and regulations have been included in the section of the Final EIS that indicate the difficulty in balancing land use -- both the land use codes by themselves and also with other codes. See Section 3.4.6 for this list.</p>	<p>Growth Management Hearings Board decisions: Under any of the alternatives, there would be no significant impacts to the land use pattern, but could be significant to perceived "rural" neighborhood character.</p>

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
R-1 Alternative	<p>inconsistency should not result in significant land use impacts to Wood Trails or to the industrial area.</p> <p>This alternative would result in the development of 23 single-family residences on the Wood Trails site on 1-acre lots, plus the construction of roads, landscaping, and a storm drainage system. The site would be converted from undeveloped to low-density, single-family residential use. A portion of the site, approximately 24.9 acres, would remain undisturbed, although this area would be broken up and would be surrounded by homes and other site development. Because the site is vacant, no existing uses would be displaced. The net decrease in open space and number of trees on the site would be slightly less than in the Proposed Action.</p> <p>Relative to the Proposed Action, in this alternative Wood Trails would be more compatible with existing adjacent low-density, large-lot, single-family residential land use to the north, south, and east of the site in Wellington Hills. The proposed detached single-family structures would be compatible in form with the existing adjacent detached single-family structures.</p> <p>The R-1 Zoning Alternative would perpetuate the existing land use pattern in the local area. The City of Woodinville considers R-1 to R-4 low-density urban development. However, the courts and the Hearings Boards have questioned whether 1-acre development patterns would be considered "urban." It could be viewed as inconsistent with a threshold for urban density, based on past Growth Management Hearings Board decisions.</p> <p>In this alternative the Montevallo site would be developed with 14 single-family residences on 1-acre lots, plus the construction of roads, landscaping, and a storm drainage system. The site would remain in single-family residential use, but would have an increased housing density. As in the Proposed Action, five single-family homes and outbuildings would be displaced, and the existing, relatively open character of the site would be changed. There would be a net decrease in open space and number of trees on the site, about the same as in the</p>	Mitigation for this alternative would be similar to that of the Proposed Action.	The same as the Proposed Action.

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
	<p>Proposed Action.</p> <p>The R-1 Zoning Alternative would utilize individual on-site septic systems, and would not introduce sanitary sewer service to Wellington Hills. Therefore, compared to the Proposed Action, the R-1 Zoning Alternative would be less likely to have the indirect impact of encouraging additional development or redevelopment in the immediate area. However, the R-1 Zoning Alternative could still be viewed as an intensification of the existing land use pattern (albeit less so than the Proposed Action), because it would introduce 37 new homes to a neighborhood (23 in Wood Trails and 14 in Montevallo) that has not recently experienced this scale of development or redevelopment.</p>		

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
Attached Housing Alternative	<p>This alternative would result in development of 85 attached, single-family, townhouse-style residences on the Wood Trails site, plus the construction of roads, landscaping and a storm drainage system. The site would be converted from undeveloped land to urban-density, single-family residential use. A portion of the site, approximately 28.7 acres, would remain undisturbed. No existing uses would be displaced. The net decrease in open space and number of trees on the site would be less than in the Proposed Action.</p> <p>Residential use of the site would be compatible with adjacent land uses. In terms of density, and relative to the Proposed Action, in the Attached Housing Alternative development would be more dense and more urban in character relative to existing adjacent large-lot, single-family residential land use to the north, south, and east of the site. The proposed attached townhouse structures would be different in form from existing adjacent detached single-family structures. The Attached Housing Alternative could be viewed as a greater intensification of the existing land use pattern relative to the Proposed Action, because it would introduce more new homes (85) and these homes would be different from (and to some viewers, more "urban" in form) than the traditional detached single-family structure.</p> <p>The Attached Housing Alternative would utilize public sanitary sewer service on both sites, which could have the indirect impact of encouraging additional development (See discussion in the text). This Alternative could be viewed as an intensification of the existing land use pattern (albeit less so than the Proposed Action), that the neighborhood has not recently experienced to this scale of development or redevelopment. The secondary and cumulative land use impacts for this alternative would be essentially the same as those described previously for the Proposed Action.</p>	<p>In this alternative, the Wood Trails townhouse structures could be designed with additional architectural features and detailing (offsets, building modulation, multiple eaves, etc.) that tend to visually reduce the scale and break up the mass of the buildings. This would make them more compatible in character with surrounding detached single-family structures. The maximum number of units per building could be limited, to further reduce the mass and scale of individual buildings. Additional undeveloped open space could be preserved if a vault replaced the proposed open stormwater detention facilities proposed for Wood Trails.</p> <p>Additional mitigation for this alternative would be similar to that of the Proposed Action and the R-1 Alternative.</p>	Same as the Proposed Action
No Action Alternative	<p>In the No Action Alternative, there would be no new development on either the Wood Trails or the Montevallo site for the foreseeable future. The Wood Trails site would presumably remain undeveloped and larger-lot residential use would continue on the Montevallo site. There would be no direct, indirect or cumulative land use impacts related to proposed residential development on these sites.</p>	<p>No significant adverse impacts area expected to Land Use if the No Action alternative is implemented.</p>	

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
Transportation (Section 3.5)			
Proposed Action	<p>Based on the scoping process, City staff identified the study area intersections to be addressed in this analysis (see Figure 3.5-1). They include the signalized intersections located within the project limits for the City's Capital Improvement Plan (CIP). City staff also indicated that the study area should include the non-signalized intersections on 156th Avenue NE that are along the access routes to the two development sites (due to the directional and peaking nature of traffic in the area, both AM and PM peak-hour operations were evaluated at most study area intersections). Consequently, the following intersections are evaluated in this study:</p> <ul style="list-style-type: none"> • 156th Avenue NE/NE 203rd Place • 156th Avenue NE/NE 202nd Street • 156th Avenue NE/NE 201st Street • 156th Avenue NE/NE 198th Street • 156th Avenue NE/NE 195th Street • 156th Avenue NE/NE Woodinville-Duvall Road • NE Woodinville-Duvall Road/NE Woodinville Way • NE Woodinville-Snohomish Road/NE 195th Street <p>For the Final EIS, the following intersections were added to the study for analysis of their PM peak-hour operations:</p> <ul style="list-style-type: none"> • 240th Street SE/Woodinville - Snohomish Road • 240th Street SE/75th Avenue SE • 156th Avenue NE/NE 204th Street (proposed new Montevillo access) • 156th Avenue NE/NE 203rd Street (proposed new Montevillo access) 	<p>To address the sight distance condition the following mitigation measures shall be applied:</p> <ol style="list-style-type: none"> 1) Provide traffic calming devices in the impacted portions of NE 198th Street and NE 201st as per City of Woodinville requirements. 2) Install lane delineation features in the impacted portions of NE 198th Street and NE 201st Street as per City of Woodinville requirements. 3) For the streets of NE 195th and NE 202nd, if access is not restricted from the new development on to these two street (proposed to use bollards), then an acceptable mitigation measure to address the identified sight distance conditions shall be utilized as approved by the City of Woodinville Public Works Department. <p>General improvements to a small section of NE 195th Street approaching the Wood Trails site are recommended. These improvements could include widening the roadway to a minimum width of 24 feet, along with the gravel or paved shoulders of 5 to 6 feet. Per City of Woodinville guidelines, the applicant is required to pay an impact fee for each home constructed. The transportation impact fees associated with the Attached Housing Alternative based on the City's current fee rate, would amount to approximately</p>	<p>Any of the development alternatives would cause construction-related impacts to the local road system and traffic conditions. Because these impacts would be highly localized and temporary and road damages would be repaired, these short-term impacts would be insignificant. Any of the development alternatives would also generate an unavoidable increase in traffic on local streets near the sites of the proposed subdivisions. While the level of increased traffic would vary considerably among the alternatives, the analysis indicated that none of the alternatives would generate sufficient additional traffic or changes in traffic patterns to cause significant impacts to the existing level of service at study-area intersections, based on the City's LOS standard. Similarly, the incremental traffic increases generated by the alternatives would represent insignificant impacts to other aspects of traffic operations, traffic safety, pedestrian activity and other transportation facilities or uses.</p> <p>However, the traffic impact analysis for the Proposed Action identified sight distance as an unavoidable significant adverse impact on all</p>

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Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
		\$281,000.	four of the existing local residential road located between the site and 156th Avenue NE.
R-1 Housing Alternative	Same as the Proposed Action	Same as the Proposed Action	Same as the Proposed Action
Attached Housing Alternative	Same as the Proposed Action	Same as the Proposed Action	Same as the Proposed Action
No Action Alternative	No improvements to traffic is anticipated in the near future without the project	No significant traffic-related impacts would be likely to occur under the No Action Alternative, and no traffic mitigation measures are identified.	No significant traffic-related impacts would be likely to occur under the No Action Alternative.
Public Services (Section 3.6)	<p>Project Vicinity There are no existing City of Woodinville parks, recreation facilities or properties (developed or undeveloped) in the West Wellington neighborhood or within close walking distance. Level of Service (LOS) analysis is the traditional method of measuring progress toward meeting park needs and objectives. LOS standards are guidelines that communities use to quantify park acres, miles of trails and numbers of facilities needed to satisfy the parks and recreation demand for a given population.</p> <p>Based on this citywide level-of-service analysis, the City identified resource needs to meet the planned LOS for 2011. The needs assessment indicated a need for 9.13 acres of neighborhood parks, 20.95 acres of community parks and 3.5 miles of off-road trails. The analysis also concluded that the City had a surplus of 17 acres of resource/open space parks relative to the planned 2001 LOS.</p> <p>The city's plan identifies specific proposed projects for each category of park or recreation resource. Projects proposed by the City that would</p>	<p>The proposals for the Wood Trails include recreation facilities, or fees in lieu of facilities as permitted by City regulations, that are intended to provide mitigation for the additional recreation demand that would be generated by the developments.</p>	<p>Although there would be impacts to Parks and Recreation, no significant adverse impacts would occur.</p>

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Environmental Element Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
	<p>serve or be located close to the West Wellington neighborhood include the following:</p> <p><u>Neighborhood Parks:</u></p> <ul style="list-style-type: none"> Wellington/202nd Street Homeowner's Association property Woodinville Water District Tanks, 156th Avenue NE and NE 203rd Street Undetermined park sites (neighborhood, park sites needed in virtually all City neighborhoods) <p><u>Community Parks:</u></p> <ul style="list-style-type: none"> Wellington Hills Country Club <p><u>Resource/Open Space Parks:</u></p> <ul style="list-style-type: none"> Queensgate HOA (East Wellington) <p><u>Trails:</u></p> <ul style="list-style-type: none"> Woodin Creek/Wellington Loop Trail 156th Avenue NE Bicycle Touring Route Woodinville-Duvall Road Bicycle Touring Route <p>The Proposed Action would not have any direct impacts on recreation, as there are no existing recreation resources that would be displaced by the development, and no recreation activities that would be disturbed on a short- or long-term basis. The potential recreation impacts of the proposal would be indirect in nature.</p> <p>Population growth that would result from development of the Wood Trails under the Proposed Action would generate increased demand for park and recreation facilities. Residents of the Wood Trails would presumably have a pattern of recreational activity similar to that of existing residents of the area, which involves varying levels of use of resources provided by the City, neighboring municipalities, King County, the State of Washington, federal agencies and private-sector</p>		

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Environmental Element / Alternative	Impacts	Mitigation Measures Designed into the Project	Significant Unavoidable Adverse Impacts
	<p>providers.</p> <p>The Proposed Action would add 331 people to the existing neighborhood population. Table 3.6-3 indicates the park and recreation demand associated with this level of development, using the City's adopted LOS standards for park and recreation facilities.</p> <p>The Proposed Action would add to park and recreation demands for neighborhood and community parks, resource parks/open space and trails. The existing (2005) LOS for neighborhood parks, community parks and trails are below the 2011 planned LOS, indicating that current resources fail to meet the intended LOS standards in these categories.</p>		
R-1 Housing Alternative	<p>Based on a rate of 2.61 persons per household and 32 new households (the 37 proposed homes, 23 in Wood Trails and 14 in Montevallo, minus the 5 existing homes on the Montevallo site), the R-1 Zoning Alternative would add 84 people to the West Wellington neighborhood. Consequently, the additional recreation demand under this alternative would be approximately 25% of the level indicated above for the Proposed Action.</p>	<p>The proposals for the Wood Trails include recreation facilities, or fees in lieu of facilities as permitted by City regulations, that are intended to provide mitigation for the additional recreation demand that would be generated by the developments.</p>	<p>Although there would be impacts to Parks and Recreation, no significant adverse impacts would occur.</p>
Attached Housing Alternative	<p>Based on a rate of 2.61 persons per household and 127 new households (the 132 proposed homes, 85 in Wood Trails and 47 in Montevallo, minus the 5 existing homes on the Montevallo site), the Attached Housing Alternative would add 331 people to the neighborhood, the same as in the Proposed Action. Park and recreation impacts, based on the additional level of demand, would be the same as for the Proposed Action.</p>	<p>The proposals for the Wood Trails include recreation facilities, or fees in lieu of facilities as permitted by City regulations, that are intended to provide mitigation for the additional recreation demand that would be generated by the developments.</p>	<p>Although there would be impacts to Parks and Recreation, no significant adverse impacts would occur.</p>
No Action Alternative	<p>Under the No Action Alternative, there would be no additional demand for park and recreation facilities resulting from specific development</p>	N/A	<p>No significant adverse impacts from the No Action Alternative are</p>

Wood Trails Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
	action on the project sites. Current level-of-service conditions for the West Wellington neighborhood would likely continue, except as modified by other sources of ongoing growth and/or implementation of proposed park projects.		expected.

Table 1.4-2 Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts			
Environmental Element/ Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
Earth (Section 3.4)			
Proposed Action --	<ul style="list-style-type: none"> * Primary potential impact to earth resources is the potential for erosion resulting from surface disturbance during construction. * The soils type present on the Montevallo site have a moderate erosion hazard * Based on the lack of geologic hazards or unusual subsurface conditions, the short-term and long-term impacts to earth resources are anticipated to be negligible. 	<ul style="list-style-type: none"> * Controlling surface water runoff by maintaining existing vegetation outside the development areas. * Best Management Practices (BMPs) for dust and erosion control would be implemented during the development construction process. * The on-site wetland and required buffers would be protected as an NGPE. 	No significant impacts are expected from the Proposed Action.

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/ Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
R-1 Zoning Alternative -	<ul style="list-style-type: none"> * Primary potential impact to earth resources is the potential for erosion resulting from surface disturbance during construction. * The soils type present on the Montevallo site have a moderate erosion hazard * Based on the lack of geologic hazards or unusual subsurface conditions, the short-term and long-term impacts to earth resources are anticipated to be negligible. 	<ul style="list-style-type: none"> * Controlling surface water runoff by maintaining existing vegetation outside the development areas. * Best Management Practices (BMPs) for dust and erosion control would be implemented during the development construction process. * The on-site wetland and required buffers would be protected as an NGPE. 	No significant impacts are expected from the this Alternative.
Attached Housing Alternative -	<ul style="list-style-type: none"> * Primary potential impact to earth resources is the potential for erosion resulting from surface disturbance during construction. * The soils type present on the Montevallo site have a moderate erosion hazard * Based on the lack of geologic hazards or unusual subsurface conditions, the short-term and long-term impacts to earth resources are anticipated to be negligible. 	<ul style="list-style-type: none"> * Controlling surface water runoff by maintaining existing vegetation outside the development areas. * Best Management Practices (BMPs) for dust and erosion control would be implemented during the development construction process. * The on-site wetland and required buffers would be protected as an NGPE. 	No significant impacts are expected from the this Alternative.
No Action Alternative	Existing conditions with respect to soil and geologic characteristics would be expected to continue.	N/A	No significant impacts are expected from this No Action Alternative.
Water (Section 3.2)			
Proposed Action -	* In the short term, surface disturbance from construction of the proposed subdivisions could result in temporary changes in quantity and/or quality characteristics for surface water and groundwater.	* Construction activities on the Montevallo site would likewise be governed by the conditions of a	No significant adverse impacts are

Summary

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/ Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
	<ul style="list-style-type: none"> * The long-term conversion of forest or pasture lands to pavement, rooftops, landscaping and lawns would change the hydrologic response and runoff characteristics of the site. * Infiltration of rainfall would likely be decreased in the developed areas of the site. * The constructed water quality and detention facilities would require ongoing maintenance. * The proposed development could cause a slight decrease in the volume of shallow groundwater recharge within the site. * Changes to groundwater conditions would be less than for the Proposed Action 	<p>construction stormwater permit, which would require development of an SWPPP and use of BMPs during construction.</p> <p>* The applicant has indicated that the number of lots (clean runoff only) that would drain to the wetland in the final drainage plan will be selected to match runoff and recharge volumes and flow rates under existing conditions, thereby avoiding potential drainage-related water quantity impacts on adjacent properties.</p> <p>The proposed Montevallo development would result in relocation of the horses currently pastured on the property and the removal of the gray water discharge from one of the existing houses on the property. These existing uses have the potential to adversely affect the quality of the water draining to the on-site wetland and downstream to Little Bear Creek. Development of Montevallo as proposed would also eliminate five existing septic systems serving the current residences and provide sanitary sewer service to the new subdivision. Consequently, the drainage and utility features of the Proposed Action could potentially improve water quality in the on-site wetland, and correspondingly decrease the fecal coliform levels reaching Little Bear Creek, by removing existing potential sources of water pollution.</p>	<p>anticipated.</p>

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/Alternative	Impacts	Mitigation Measures Designed into the Project	Significant Unavoidable Adverse Impacts
R-1 Zoning Alternative -	<ul style="list-style-type: none"> * In the short term, surface disturbance from construction of the proposed subdivisions could result in temporary changes in quantity and/or quality characteristics for surface water and groundwater. * The long-term conversion of forest or pasture lands to pavement, rooftops, landscaping and lawns would change the hydrologic response and runoff characteristics of the site. * Infiltration of rainfall would likely be decreased in the developed areas of the site. * The constructed water quality and detention facilities would require on-going maintenance. * The proposed development could cause a slight decrease in the volume of shallow groundwater recharge within the site. 	<ul style="list-style-type: none"> * Construction activities on the Montevallo site would likewise be governed by the conditions of a construction stormwater permit, which would require development of an SWPPP and use of BMPs during construction. * The applicant has indicated that the number of lots (clean runoff only) that would drain to the wetland in the final drainage plan will be selected to match runoff and recharge volumes and flow rates under existing conditions, thereby avoiding potential drainage-related water quantity impacts on adjacent properties. * To avoid significant adverse impacts to the wetland, a detention pond (as opposed to a wet vault) would create a more natural system given the constraints of this site. 	No significant adverse impacts are anticipated.
Attached Housing Alternative -	<ul style="list-style-type: none"> * In the short term, surface disturbance from construction of the proposed subdivisions could result in temporary changes in quantity and/or quality characteristics for surface water and groundwater. * The long-term conversion of forest or pasture lands to pavement, rooftops, landscaping and lawns would change the hydrologic response and runoff characteristics of the site. * Infiltration of rainfall would likely be decreased in the developed areas of the site. * The constructed water quality and detention facilities would require on-going maintenance. * The proposed development could cause a slight decrease in the volume of 	<ul style="list-style-type: none"> * Construction activities on the Montevallo site would likewise be governed by the conditions of a construction stormwater permit, which would require development of an SWPPP and use of BMPs during construction. * The applicant has indicated that the number of lots (clean runoff only) that would drain to the wetland in the final drainage plan will be selected to match runoff and recharge volumes and flow rates under existing conditions, thereby 	<ul style="list-style-type: none"> * Changes to the natural hydrologic regime by decreasing the amount of water that infiltrates the soil and recharges the groundwater. * There would be increased surface runoff from the new impervious surfaces on the sites. * Flows in the downstream systems for storms exceeding the 50-year recurrence interval would be slightly higher than current levels.

Summary

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
	shallow groundwater recharge within the site.	avoiding potential drainage-related water quantity impacts on adjacent properties. * To avoid significant adverse impacts to the wetland, a detention pond (as opposed to a wet vault) would create a more natural system given the constraints of this site.	* The quality of runoff water from the sites would be less than under existing conditions.
No Action Alternative	* There would be no identifiable change to the existing site conditions or increase in impervious surfaces due to this alternative. Consequently, current surface water quantity and quality and groundwater/seepage characteristics for these properties would continue for the foreseeable future.	N/A	N/A
Plants and Animals (Section 3.3)			
Proposed Action -	<p>* The primary potential impacts for the proposed projects include loss of existing wildlife habitat as a result of vegetation removal and other construction actions, displacement of wildlife species currently using the affected habitat, possible effects on wildlife movement, direct impacts to wetlands and buffers, and potential water quantity or quality impacts to off-site aquatic habitat. These issues are addressed below as applicable for each proposed subdivision.</p> <p>* There is no alternative location for the sewer line other than through/under the wetland as proposed, however, The WMC (21.24.340) does provide discretionary authority to the Planning Director to determine that proposed buffer impacts require and may be granted an alteration from the Code.</p>	<p>* Under the Proposed Action, the existing uses of the Montevallo site would be replaced and livestock grazing would no longer occur in and around the on-site wetland. The removal of livestock from the wetland and buffer would improve water quality in the wetland through removal of the effluent source, and allow the plant community to re-establish where it is currently trampled and grazed. Therefore, the Proposed Action would have a positive indirect impact on the wetland as a result of water quality improvement.</p> <p>* The proposed project would result in extensive enhancement of the wetland buffer on the Montevallo site, which would improve the quality of the wetland habitat.</p>	<p>* Some wildlife would unavoidably be displaced.</p> <p>* The Proposed Action would result in temporary impacts to the buffer and wetland from placement of a sewer line under the wetland and through the buffer.</p> <p>* To avoid significant adverse impacts to the wetland, a detention pond (as opposed to a wet vault) would create a more natural system given the constraints of this site.</p>

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/ Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
R-1 Zoning Alternative -	<p>* The primary potential impacts for the proposed projects include loss of existing wildlife habitat as a result of vegetation removal and other construction actions, displacement of wildlife species currently using the affected habitat, possible effects on wildlife movement, direct impacts to wetlands and buffers, and potential water quantity or quality impacts to off-site aquatic habitat. These issues are addressed below as applicable for each proposed subdivision.</p>	<p>* This alternative would leave the most valuable habitat on the site (the wetland) undisturbed from its current condition, as there would be no sewer line developed under the wetland and through the buffer.</p> <p>* The proposed project would result in extensive enhancement of the wetland buffer on the Montevallo site, which would improve the quality of the wetland habitat.</p>	<p>* Under this alternative, the use of 14 individual septic systems could potentially increase fecal coliform loads that eventually reach Little Bear Creek.</p> <p>* Some wildlife would unavoidably be displaced.</p> <p>* To avoid significant adverse impacts to the wetland, a detention pond (as opposed to a wet vault) would create a more natural system given the constraints of this site.</p>
Attached Housing Alternative -	<p>* The primary potential impacts for the proposed projects include loss of existing wildlife habitat as a result of vegetation removal and other construction actions, displacement of wildlife species currently using the affected habitat, possible effects on wildlife movement, direct impacts to wetlands and buffers, and potential water quantity or quality impacts to off-site aquatic habitat. These issues are addressed below as applicable for each proposed subdivision.</p> <p>* There is no alternative location for the sewer line other than through/under the wetland as proposed, however. The WMC (21.24.340) does provide discretionary authority to the Planning Director to determine that proposed buffer impacts require and may be granted an alteration from the Code.</p>	<p>* Under the Proposed Action, the existing uses of the Montevallo site would be replaced and livestock grazing would no longer occur in and around the on-site wetland. The removal of livestock from the wetland and buffer would improve water quality in the wetland through removal of the effluent source, and allow the plant community to re-establish where it is currently trampled and grazed. Therefore, the Proposed Action would have a positive indirect impact on the wetland as a result of water quality improvement.</p> <p>* The proposed project would result in extensive enhancement of the wetland buffer on the Montevallo site, which would improve the quality of the wetland habitat.</p>	<p>* Some wildlife would unavoidably be displaced.</p> <p>* The Proposed Action and the Attached Housing Alternative would result in temporary impacts to the buffer and wetland from placement of a sewer line under the wetland and through the buffer.</p> <p>* To avoid significant adverse impacts to the wetland, a detention pond (as opposed to a wet vault) would create a more natural system given the constraints of this site.</p>

Summary

Wood Trails & Montevallo Subdivisions

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Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/ Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
No Action Alternative	<p>* Under this alternative five current residences would remain on the Montevallo site for the foreseeable future. Impacts to plant or animal life resulting from development of subdivisions on these sites would not occur. Any changes to vegetative and habitat conditions on the subject properties would be limited to maturation of existing plant communities and the land use practices of the current Montevallo residences. Grazing and an existing gray-water discharge on the Montevallo site would continue to affect water quality in the on-site wetland.</p>	N/A	N/A
Land Use (Section 3.4)			
Proposed Action	<p>* The proposed Montevallo subdivision would result in development of 66 single-family residences, plus the construction of roads, landscaping, and a storm drainage system. The site would be redeveloped and converted from current lower-density (R-1), single-family residential use to the higher end of the low density range (R-4) residential use. Five single-family homes and outbuildings that currently are on the site would be displaced. The open character of the site would be changed, with houses, streets, detention facilities, and other site improvements occupying almost the entire site except for the wetland and buffer on the western portion of the site. There would be a net decrease in open space and the number of trees on the site.</p> <p>* Development of the proposal would result in a change in the character of the site, from undeveloped/wooded to developed/urban residential use.</p> <p>* The Proposed Action for Montevallo would extend sanitary sewer service from the industrial into the Wellington Hills residential area making it feasible for the development of property at a higher, single-family residential density than is currently typical in the immediate area.</p>	<p>* Additional open space on the Montevallo site could be preserved if the number of additional units allowed through density transfer provisions were reduced.</p> <p>* Indirect and cumulative impacts are possible, but are not considered probable or likely to occur. Similarly, the timing as well as the occurrence of potential future change is unknown. If change were to occur, it would involve the interaction of a variety of economic and market forces - such as land value, age and cost of existing structures, ability of developers to aggregate properties, individual investment decisions, local economic conditions, etc. - that cannot be predicted and that are not causally related to the proposed plans.</p> <p>* Land Use Policies would carry out the Comprehensive Plan goals.</p>	<p>* There would be loss of open space, trees and undeveloped land.</p> <p>* Based on the level of existing development surrounding the sites and the amount of open space that would remain on the sites could be perceived as a significant land use impact within the neighborhood and adjacent properties.</p> <p>* The change would be visible to a limited number of adjacent residences; There could be a loss of perceived "rural" neighborhood character.</p>

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/ Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
R-1 Zoning Alternative --	<ul style="list-style-type: none"> * A total of 14 Single Family homes could be constructed and five single-family homes and outbuildings that currently are on the site would be displaced. The open character of the site would be changed, with houses, streets, detention facilities, and other site improvements occupying almost the entire site except for the wetland and buffer on the western portion of the site. There would be a net decrease in open space and the number of trees on the site. * Development of the proposal would result in a change in the character of the site, from undeveloped/wooded to developed/urban residential use. * The Proposed Action for Montevallo would extend sanitary sewer service from the industrial into the Wellington Hills residential area making it feasible for the development of property at a higher, single-family residential density than is currently typical in the immediate area. 	<ul style="list-style-type: none"> * The Montevallo site could retain additional open space if the plat were reconfigured to utilize smaller lot sizes (like the lot sizes in the Proposed Action), which would result in a smaller overall development area. 	<ul style="list-style-type: none"> * There would be loss of open space, trees and undeveloped land. * Based on the level of existing development surrounding the sites and the amount of open space that would remain on the sites could be perceived as a significant land use impact within the neighborhood and adjacent properties. * The change would be visible to a limited number of adjacent residences. There could be a loss of perceived "rural" neighborhood character. * Under the R-1 Zoning Alternative, development densities could be viewed as inconsistent with Growth Management Hearings Board decisions.
Attached Housing Alternative -	<ul style="list-style-type: none"> * The proposed Montevallo subdivision would result in development of 66 single-family residences, plus the construction of roads, landscaping, and a storm drainage system. The site would be redeveloped and converted from current lower-density (R-1), single-family residential use to the higher end of the low density range. (R-4) residential use. Five single-family homes and outbuildings that currently are on the site would be displaced. The open character of the site would be changed, with houses, streets, detention facilities, and other site improvements occupying almost the entire site except for the wetland and buffer on the western portion of the site. There would be a net decrease in open space and the number of trees on the site. * Development of the proposal would result in a change in the character of the site, from undeveloped/wooded to developed/urban residential use. * The Proposed Action for Montevallo would extend sanitary sewer service from the industrial into the Wellington Hills residential area making it feasible for the development of property at a higher, single-family residential density than is currently typical in the immediate area. 	<ul style="list-style-type: none"> * Additional open space on the Montevallo site could be preserved if the number of additional units allowed through density transfer provisions were reduced. * Indirect and cumulative impacts are possible, but are not considered probable or likely to occur. Similarly, the timing as well as the occurrence of potential future change is unknown. If change were to occur, it would involve the interaction of a variety of economic and market forces - such as land value, age and cost of existing structures, ability of developers to aggregate properties, individual investment 	<ul style="list-style-type: none"> * There would be loss of open space, trees and undeveloped land. * Based on the level of existing development surrounding the sites and the amount of open space that would remain on the sites could be perceived as a significant land use impact within the neighborhood and adjacent properties. * The change would be visible to a limited number of adjacent residences. There could be a loss of perceived "rural" neighborhood character.

Summary

Wood Trails R Montevallo Subdivisions

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Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/ Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
No Action Alternative	* There would be no new development on the Montevallo site for the foreseeable future. The larger-lot residential use would continue on the Montevallo site. There would be no direct, indirect or cumulative land use impacts related to proposed residential development on these sites.	<p>decisions, local economic conditions, etc. - that cannot be predicted and that are not causally related to the proposed plans.</p> <p>* Land Use Policies would carry out the Comprehensive Plan goals.</p>	
Transportation (Section 3.5)		N/A	N/A
Proposed Action	<p>* Construction activity for the Proposed Action would result in some short-term transportation impacts in the neighborhoods during the construction period. These impacts would likely include temporary traffic disruptions or detours on local streets caused by construction vehicle traffic and construction of roadways and utilities to serve the proposed subdivisions. Construction activity would also likely result in some level of damage to the surfaces of local streets.</p> <p>* This would cause construction-related impacts to the local road system and traffic conditions.</p>	<p>* The development would require mitigation for impacts to roadways and other facilities caused by construction activities. These measures typically include designation of construction traffic routes; traffic control plans and restoration of damaged roads to pre-project conditions. Mitigation measures for construction impacts are typically addressed during City review of construction plans, and are incorporated into the terms of the haul route agreement and/or heavy hauling permit for a development project.</p> <p>* Traffic Impact Fees would be paid to help offset CIP costs.</p>	<p>* The development would generate an unavoidable increase in traffic on local streets near the sites of the proposed subdivisions.</p> <p>* The incremental traffic increases generated by the alternatives would represent impacts to other aspects of traffic operations, traffic safety, pedestrian activity and other transportation facilities or uses.</p>

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/ Alternative	Impacts	Mitigation Measures Designed into the Project	Significant Unavoidable Adverse Impacts
R-1 Zoning Alternative -	<p>* Construction activity for the Proposed Action would result in some short-term transportation impacts in the neighborhoods during the construction period. These impacts would likely include temporary traffic disruptions or detours on local streets caused by construction vehicle traffic and construction of roadways and utilities to serve the proposed subdivisions. Construction activity would also likely result in some level of damage to the surfaces of local streets.</p> <p>* This would cause construction-related impacts to the local road system and traffic conditions.</p>	<p>* The development would require mitigation for impacts to roadways and other facilities caused by construction activities. These measures typically include designation of construction traffic routes, traffic control plans and restoration of damaged roads to pre-project conditions. Mitigation measures for construction impacts are typically addressed during City review of construction plans, and are incorporated into the terms of the haul route agreement and/or heavy hauling permit for a development project.</p> <p>* Traffic Impact Fees would be paid to help offset CIP costs.</p>	<p>* The development would generate an unavoidable increase in traffic on local streets near the sites of the proposed subdivisions.</p> <p>* The incremental traffic increases generated by the alternatives would represent impacts to other aspects of traffic operations, traffic safety, pedestrian activity and other transportation facilities or uses.</p>
Attached Housing Alternative -	<p>* Construction activity for the Proposed Action would result in some short-term transportation impacts in the neighborhoods during the construction period. These impacts would likely include temporary traffic disruptions or detours on local streets caused by construction vehicle traffic and construction of roadways and utilities to serve the proposed subdivisions. Construction activity would also likely result in some level of damage to the surfaces of local streets.</p> <p>* This would cause construction-related impacts to the local road system and traffic conditions.</p>	<p>* The development would require mitigation for impacts to roadways and other facilities caused by construction activities. These measures typically include designation of construction traffic routes, traffic control plans and restoration of damaged roads to pre-project conditions. Mitigation measures for construction impacts are typically addressed during City review of construction plans, and are incorporated into the terms of the haul route agreement and/or heavy hauling permit for a development project.</p> <p>* Traffic Impact Fees would be paid to help offset CIP costs.</p>	<p>* This would cause construction-related impacts to the local road system and traffic conditions.</p> <p>* The development would generate an unavoidable increase in traffic on local streets near the sites of the proposed subdivisions.</p> <p>* The incremental traffic increases generated by the alternatives would represent impacts to other aspects of traffic operations, traffic safety, pedestrian activity and other transportation facilities or uses.</p>

Summary

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element / Alternative	Impacts	Mitigation Measures Designed Into the Project	Significant Unavoidable Adverse Impacts
No Action Alternative	* The No Action alternative represents a case of no new development for the foreseeable future. Future traffic volumes would be as noted previously, as the baseline condition, which would reflect existing conditions and background growth in the local area.	N/A	N/A
Public Services (Section 3.6)			
Proposed Site Proposed Action -	<p>* The Proposed Action would not have any direct impacts on recreation, as there are no existing recreation resources that would be displaced by development of the Montevallo subdivision, and no recreation activities that would be disturbed on a short- or long-term basis. The potential recreation impacts of the proposal would be indirect in nature.</p> <p>* Population growth that would result from development of the Montevallo subdivision under the Proposed Action would generate increased demand for park and recreation facilities.</p>	<p>* Development under the Proposed Action would be subject to payment of park impact fees.</p>	<p>* This action would add slightly to the citywide demand on parks and recreation facilities in Woodinville.</p>

Montevallo Impacts, Mitigation and Significant Unavoidable Adverse Impacts

Environmental Element/ Alternative	Impacts	Mitigation Measures Designed into the Project	Significant Unavoidable Adverse Impacts
R-1 Zoning Alternative --	<p>* The Proposed Action would not have any direct impacts on recreation, as there are no existing recreation resources that would be displaced by development of the Montevallo subdivision, and no recreation activities that would be disturbed on a short- or long-term basis. The potential recreation impacts of the proposal would be indirect in nature.</p> <p>* Population growth that would result from development of the Montevallo subdivision under the Proposed Action would generate increased demand for park and recreation facilities.</p>	<p>* Development under the Proposed Action would be subject to payment of park impact fees.</p>	<p>* This action would add slightly to the citywide demand on parks and recreation facilities in Woodinville.</p>
Attached Housing Alternative -	<p>* The Proposed Action would not have any direct impacts on recreation, as there are no existing recreation resources that would be displaced by development of the Montevallo subdivision, and no recreation activities that would be disturbed on a short- or long-term basis. The potential recreation impacts of the proposal would be indirect in nature.</p> <p>* Population growth that would result from development of the Montevallo subdivision under the Proposed Action would generate increased demand for park and recreation facilities.</p>	<p>* Development under the Proposed Action would be subject to payment of park impact fees.</p>	<p>* This action would add slightly to the citywide demand on parks and recreation facilities in Woodinville.</p>
No Action Alternative	<p>* Under the No Action Alternative, there would be no additional demand for park and recreation facilities resulting from specific development action on the project sites. Current level-of-service conditions for the West Wellington neighborhood would likely continue, except as modified by other sources of ongoing growth and/or implementation of proposed park projects.</p>	<p>* There would be no specific recreation mitigation proposed as part of the No-Action Alternative.</p>	<p>N/A</p>

Summary

1.5 MAJOR CONCLUSIONS

The major conclusions of the analysis documented in this Final EIS include, a number of significant adverse environmental impacts that could occur from implementation of the proposals, including:

- impacts to steep, potentially unstable and erosion prone slopes
- impacts to two wetlands, one on each site
- impacts of urban characteristics in a "rural character" setting
- and to a lesser extent impacts to roadways, with site distance problems

1.6 SIGNIFICANT AREAS OF CONTROVERSY AND UNCERTAINTY

Controversy often arises from technical issues and personal preferences. Wood Trails and Montevallo area no exception. The following are significant areas of controversy surrounding these two proposals.

- Although the proposals (i.e., residential plats) are not particularly large or unique in nature, their location in a low-density neighborhood (generally developed at an average of about 1 dwelling unit per acre) has generated controversy among nearby residents. The controversy also reflects a more general concern regarding future infill development at urban densities from introduction of sewers. As of this writing the City has applied a moratorium to new development within the R-1 zones of the City and is conducting a study of sustainable development to help determine future direction for these areas. The difficulty arises in the balance between urban growth within a city's boundary and maintaining natural environments and a low density zoning with a rural character.
- Major concerns raised by members of the community relate to development compatibility because of differing densities and loss of undeveloped land/open space, and the resulting change in the character of the neighborhood. Issues regarding land use, density and neighborhood change are probably the most frequently raised and generate the most controversy. Proposed land uses are of the same type as surrounding development (i.e., single-family residences) and although the proposed density is higher (4 dwelling units per acre) it is still considered low-density under the City's Comprehensive Plan.
- Each proposal has direct impacts on the environment, some which could rise to the level of significant adverse. Erosion hazard areas exist on Wood Trails. Neighbors, technical experts and the general public differ in their views. Some contend that the slope are stable and can handle engineering solutions, while others believe that slopes of this nature tend to create long-term erosion and stability problems, that are difficult to prevent. The design of the proposal could be altered to minimize many of the potential effects.
- A debate over urban design standards such as road widths is a challenge. Wider roads create more of a sense urban character, yet increase impervious area. Narrower roads create a more rural character, but challenge the need for parking and safety on roads.
- One wetland on each proposal site will be impacted. The one on Wood Trails would be eliminated and replaced with a detention facility and the one on Montevallo will potentially be drained. Debate is occurring over these two issues. Removal of the wetland on Wood Trails may be logical for its location for the detention facility.

No significant uncertainty has been identified by the City in regard to the type or magnitude of impacts that are anticipated, with the exception of the controversy over density. All other issues can be mitigated

The City believes that the impact conclusions provided in the Final EIS are accurate assessments of whether probable, significant adverse impacts would occur, and are consistent with the technical information considered in the environmental review.

1.7 ISSUES TO BE RESOLVED

The EIS identifies many issues that will be resolved during City review of the proposal. The major issue regarding the proposals is the compatibility of infill residential development (at 4 dwelling units per acre) with existing lower-density residential development (averaging about 1 dwelling unit per acre), and the acceptability to the community of the change associated with this infill. The City will need to resolve that issue when it considers the proposed rezones. Other issues involve design factors that will be resolved during City review of the subdivision applications, if the rezone and preliminary plat applications are approved. The following table, Table 1.8-1 provides examples of some issues to be resolved.

3.4 LAND USE

3.4.1 Existing Conditions

Citywide

The City's Comprehensive Plan (City of Woodinville 2002) divides the City into seven neighborhoods, based on the existing land use, geography, and character of these areas. Three of these neighborhoods are primarily residential: The Wedge (northwest portion of the City, north and west of SR-522); West Ridge (southwest portion of the City, west of the river and the Valley Industrial area); and Leota (the northeast portion of the City, generally east of the Town Center and the North Industrial neighborhoods, extending to the City limits on the north, south, and east). See Figure 1-1 of Section 1, Summary. The sites for the proposed subdivisions are both located in the northwest corner of the Leota Neighborhood. (Note: The 2005 Woodinville Parks, Recreation and Open Space [PRO] Plan uses somewhat different neighborhood nomenclature than does the Comprehensive Plan. This discussion follows the Comp Plan terminology, while other portions of the EIS use the PRO Plan terminology.)

Overall, the predominant land use in Woodinville is residential. As of the year 2000, the City had 3,888 total residential units; approximately 57 percent of these were single-family, detached residential units (including mobile homes) and 43 percent were multi-family dwellings (including townhouses; City of Woodinville 2002). The average residential density Citywide, based on the total number of units and the total acreage in residential use, was approximately 1.9 units per acre. For areas in single-family residential use, the average density was 1.1 units per acre. Residential land uses are predominant in City neighborhoods except the Town Center, the two industrial neighborhoods and the Tourist District.

The Town Center neighborhood is centered around NE 175th Street, roughly between 156th Avenue NE on the east and the Sammamish River on the west. The Town Center is primarily commercial. There has been new commercial development in the past several years and construction of a new City Hall; a recently completed City subarea plan envisions further redevelopment. The Valley Industrial neighborhood runs along either side of the Sammamish River, and is characterized by light industrial and warehousing and distribution uses. The North Industrial area is located north of the Town Center, extending north to the City limits/County line. It is bordered on the west by SR-522. In the past this area was characterized by auto salvage yards and similar uses; it is presently transitioning to light industrial and commercial uses. Just to the north of the City limits, King County Metro is building the Brightwater wastewater treatment plant in Snohomish County's unincorporated Urban Growth Area. The Tourist District is at the south end of the City, centered on NE 144th Street and the Sammamish River; predominant land uses are wineries and breweries, and related restaurant and hospitality uses.

A predominant natural feature in the City is the Sammamish River, which is located in the southwest part of the City. It flows through the Tourist District and the Valley Industrial neighborhood, passing along the southwest edge of the Town Center. There is a steep escarpment to the west of the river, and valley floor to the east. Little Bear Creek, which flows into the Sammamish River, is located just to the west of SR-522, between the Wedge and North Industrial neighborhoods.

SR-522, which in Woodinville is developed as a limited access highway, is a predominant man-made feature in the City, along with the railroad tracks bordering the highway and extending south through the Valley Industrial neighborhood.

Figure 3.4-1 shows existing land use citywide, as of 2000; Figure 3.4-2 shows Woodinville's neighborhoods and Figure 3.4-2(a) the 2006 Zoning and Urban Growth Boundary.

Leota Neighborhood

The two proposals are located within the Leota neighborhood. The Leota neighborhood is predominantly low-density single-family homes, many developed on 1-acre lots and most without public sewer. There is a scattering of undeveloped properties throughout the neighborhood. There is an existing Neighborhood Business area at the intersection of 156th Ave NE with Woodinville-Duvall Road. Lake Leota is a small lake surrounded by single-family residences located in the southeast portion of the Leota neighborhood. The Wellington Hills Golf Course and large-lot single-family residential uses in unincorporated Snohomish County border the Leota neighborhood to the north. Figure 3.4-2(b) shows land parcels by size.

Wellington Hills

The area in which the two proposal sites are located is commonly known as Wellington Hills, after the golf course immediately north of the neighborhood (in rural unincorporated Snohomish County). The Wellington Hills area is in the northwest corner of the larger Leota neighborhood.

Wellington Hills is a neighborhood of mostly large-lot (0.5 acre to 2-acre lots, zoned R-1), single-family residential homes served by public water and individual on-site septic systems. Many of the homes were built in the 1970s and 1980s, though some are newer, and a few are older homes. Streets in Wellington Hills are typically paved but without curbs, gutter and sidewalks. Most of the neighborhood is heavily wooded, with open areas, particularly in the north-central part of the area.

Wellington Hills is bordered on the north by the City limits, which also is the King-Snohomish County line. Across the City line are the golf course and larger-lot single-family development. To the west, a steep, wooded bluff separates Wellington Hills from the North Industrial area. To the south and east, Wellington Hills is bordered by other parts of the larger Leota neighborhood.

Appendix H

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Appendix H

all such users cease using the structure as provided in this section. (Ord. 338 § 1, 2003; Ord. 233 § 23, 1999)

21.26.160 Signs.

Except as approved by the Planning Director as part of a plan to conceal, disguise, or camouflage a personal wireless service facility, no signs, symbols, flags, banners, or similar devices shall be placed on, attached to, painted, or inscribed upon any antenna support structure or alternative antenna support structure. Notwithstanding the foregoing, an applicant and/or land owner may place not more than four signs measuring 12 by 18 inches upon or near a personal wireless service facility which: (1) state that trespassers will be prosecuted; (2) list the names and telephone numbers of persons to be contacted in the event of an emergency; (3) identify the applicant and/or land owner or person responsible for operating the personal wireless facility; and/or (4) contain information necessary and convenient for the person operating the personal wireless service facility to identify the personal wireless service facility. Nothing in this section shall be construed to prohibit the placement of safety or warning signs upon any portion of the personal wireless service facility which are required by law or which are designed to apprise emergency response personnel and the employees and agents of personal wireless service providers of particular hazards associated with equipment located upon the personal wireless service facility. (Ord. 338 § 1, 2003; Ord. 233 § 23, 1999)

21.26.170 Lighting standards.

Except as specifically required by Federal Aviation Administration (FAA) or FCC regulations, antenna support structures shall not be illuminated. However, equipment enclosures may be illuminated for security reasons when compatible with the surrounding neighborhood. (Ord. 338 § 1, 2003; Ord. 233 § 23, 1999)

Chapter 21.28

DEVELOPMENT STANDARDS – ADEQUACY OF PUBLIC FACILITIES AND SERVICES

Sections:

- 21.28.010 Purpose.
- 21.28.020 General requirements.
- 21.28.030 Adequate sewage disposal.
- 21.28.040 Adequate water supply.
- 21.28.050 Surface water management.
- 21.28.060 Adequate roads.
- 21.28.070 Adequate roads – Road capacity level of service (LOS) standard.
- 21.28.080 Adequate roads – Applicability of capacity standard.
- 21.28.090 Adequate roads – General conditions.
- 21.28.100 *Reserved.*
- 21.28.110 Exceptions.
- 21.28.120 Adequate vehicular access.
- 21.28.130 Adequate fire protection.
- 21.28.140 School concurrency – Applicability and relationship with fees.
- 21.28.150 Findings, recommendations, and decisions regarding school capacities.
- 21.28.160 School concurrency standard.
- 21.28.170 *Reserved.*
- 21.28.180 Credit for improvements.

21.28.010 Purpose.

The purpose of this chapter is to ensure that public facilities and services necessary to support development are adequate or will be provided in a timely manner consistent with the public facilities and services planning goal of the Washington State Growth Management Act of 1990 by:

(1) Specifying the on-site and off-site facilities and services that must be in place or otherwise assured of timely provision prior to development;

(2) Allocating the cost of those facilities and services fairly; and

(3) Providing a general framework for relating development standards and other requirements of this code to:

(a) Adopted service level standards for public facilities and services;

(b) Procedural requirements for phasing development projects to ensure that services are provided as development occurs; and

(c) The review of development permit applications. (Ord. 175 § 1, 1997)

21.28.020 General requirements.

(1) All new development proposals including any use, activity, or structure allowed by Chapter 21.08 WMC that requires the City of Woodinville approval shall be adequately served by the following facilities and services prior to the time of occupancy, plat recording, or other land use approval, as further specified in this chapter:

- (a) Sewage disposal;
- (b) Water supply;
- (c) Surface water management;
- (d) Roads and access;
- (e) Fire protection service; and
- (f) Schools.

(2) Regardless of the number of sequential permits required, the provisions of this chapter shall be applied only once to any single development proposal. If changes and modifications result in impacts not considered when the proposal was first approved, the City shall consider the revised proposal as a new development proposal.

(3) Utilities are encouraged to co-locate distribution lines when completing upgrades or when utility relocations are considered as a part of major street improvements.

(4) Any building constructed for the purposes of a utility and requiring a building permit shall meet the landscaping requirements for utilities and subregional utilities in Chapter 21.16 WMC and, if applicable, the City's Design Guidelines.

(5) All utilities are subject to the sensitive areas regulations in Chapter 21.24 WMC. (Ord. 175 § 1, 1997)

21.28.030 Adequate sewage disposal.

All new development shall be served by an adequate public or private sewage disposal system, including both collection and treatment facilities as follows:

(1) New development is encouraged to hook up to the public sewage system, provided that:

(a) For the issuance of a building permit, preliminary plat approval or other land use approval the site of the proposed development is served by an existing disposal system consistent with the City-approved comprehensive sewer plan, and the disposal system has been approved by the City and the Woodinville Water District or local purveyor as being consistent with applicable State and local design and operating guidelines;

(b) For the issuance of a certificate of occupancy for a building permit, the approved public sewage disposal system as set forth in subsection (1)(a) of this section is installed to serve each building or lot;

(c) For recording a final plat, final short plat or binding site plan the approved public sewage disposal system set forth in subsection (1)(a) of this section shall be installed to serve each lot respectively; or a bond or similar security shall be deposited with the Public Works Director for the future installation of an adequate sewage disposal system. The bond may be assigned to a purveyor to assure the construction of such facilities within two years of recording; and

(d) For a zone reclassification, the timing of installation of required sewerage improvements shall be contained in the approving ordinance.

(2) A private individual sewage system may be approved, if an on-site sewage disposal system for each individual building or lot is installed to meet the requirements and standards of the County Department of Public Health as to lot size, soils, and system design prior to issuance of a certificate of occupancy for a building permit or approval of a preliminary plat or short plat.

(3) Hook up to the public sewage system may be required for expansion of existing developments within 330 feet of the sewage system. (Ord. 175 § 1, 1997)

21.28.040 Adequate water supply.

(1) All new development shall be served by an adequate public or private water supply system as follows: A public water system is adequate for a development proposal provided that:

(a) For the issuance of a building permit, preliminary plat approval or other land use approval, the applicant must demonstrate that the existing water supply system serving the site complies with the following:

(i) Applicable planning, operating and design requirements of the State, the County, coordinated water system plans, and other applicable provisions of the rules and regulations of the City; and any limitation or condition imposed by the City-approved Comprehensive Plan of the water purveyor; and

(ii) The proposed improvements to an existing water system have been reviewed by the Public Works Director and the local purveyor and determined to comply with the design standards and conditions specified in subsection (1)(a)(i) of this section; or

(iii) A proposed new water supply system has been reviewed by the Public Works Director and the local purveyor and determined to comply with the design standards and conditions specified in subsection (1)(a)(i) of this section;

(b) Prior to issuance of a certificate of occupancy for a building permit, the approved public water system and any system improvements set forth in subsection (1)(a) of this section shall be installed to serve each building or lot respectively;

(c) For recording a final plat, final short plat or binding site plan, either the approved public water supply system or system improvements set forth in subsection (1)(a) of this section shall be installed to serve each lot or a bond or similar security shall be deposited with the Public Works Director and may be assigned to a purveyor to assure the construction of required water facilities in Group A systems as defined by Board of Health regulations, within two years of recording; and

(d) For a zone reclassification, the timing of installation of required water system improvements shall be included in the approving ordinance.

(2) Existing developments seeking building permits for improvements or additions that are served by private water systems are encouraged to hook up to the municipal water system. (Ord. 175 § 1, 1997)

21.28.050 Surface water management.

All new development shall be served by an adequate surface water management system as follows:

(1) The proposed system is adequate if the development proposal site is served by a surface water management system approved by the Department as being consistent with the design, operating and procedural requirements of the King County Surface Water Design Manual and the City.

(2) For a subdivision or zone reclassification, the phased installation of required surface water management improvements shall be stated in the approving ordinance. Such phasing may require that a bond or similar security be deposited with the Public Works Director.

(3) A variance request from the requirements of the King County Surface Water Design Manual shall be reviewed by the City's Public Works Director and does not require a variance from this title unless relief is requested from a building height, setback, landscaping or other development standard set forth in Chapters 21.12 through 21.38 WMC.

(4) The City encourages low-cost, long-term maintenance methods be incorporated in the design of new or modified storm water facilities. The Public Works Director may further require enhancement of storm water facilities to include recreational facilities or other aesthetically pleasing amenities.

(5) In the event that a developer is required to build a storm water facility of regional and/or area wide significance, the Public Works Director may work with the developer to achieve a means of reimbursement to the developer for shared costs beyond that required to mitigate the development's impacts. This could be accomplished through a latecomer's agreement, impact fee program, or other method of collecting funds from other developers or the City or users benefiting from such a facility. (Ord. 175 § 1, 1997)

21.28.060 Adequate roads.

(1) All new development shall be served by adequate roads. Roads are adequate if the development's traffic impacts on surrounding public roads are acceptable under the level of service standards as stated in WMC 21.28.070 and the compliance procedures established in WMC 21.28.080 and 21.28.090.

(2) The renewal of permits or the issuance of a new permit for existing uses constitutes a new development proposal only if it will generate additional traffic above that currently generated by the use.

(3) A variance request from the road cross-section or construction standards established by the WMC shall be reviewed as set forth in WMC 21.42.100 and does not require a variance from this title unless relief is requested from a building height, setback, landscaping or other development standard set forth in Chapters 21.12 through 21.38 WMC.

(4) The establishment or acquisition of any new rights-of-way shall comply with the provisions of Chapter 21.24 WMC. The location of new or expanded rights-of-way shall consider the protection of natural systems and provide adequate buffering from surrounding land uses. (Ord. 175 § 1, 1997)

21.28.070 Adequate roads – Road capacity level of service (LOS) standard.

(1) A calculated LOS D or better shall be considered desirable.

(2) A calculated LOS E shall be considered adequate.

(3) A calculated LOS F shall be considered inadequate. (Ord. 175 § 1, 1997)

21.28.080 Adequate roads – Applicability of capacity standard.

The road adequacy standards as stated in WMC 21.28.070 shall apply to all public City, County, or State roads, other than freeways, provided that:

(1) No improvements to State roads shall be required unless the State requests such improvements and there is an agreement between the State, City and applicant;

(2) No improvements to County roads shall be required unless the County requests such improvements and an interlocal agreement is adopted by County and City ordinances. An application of different standards than set forth in WMC 21.28.070 may be allowed within the City limits or the City's planning area, outside the City, through an interlocal agreement if such standards are agreed upon through an interlocal agreement and have been adopted as an official control by City and County ordinance; and

(3) The standard established in WMC 21.28.070 shall be applied to a project unless a different standard as provided in subsection (2) of this section has been adopted prior to the project date, or, in the case of plats, it has been adopted prior to the preliminary plat approval date. (Ord. 175 § 1, 1997)

21.28.090 Adequate roads – General conditions.

(1) A development proposal which will have a direct traffic impact, as defined by WMC 21.06.168, on a roadway or intersection which results in a calculated LOS F shall not be approved unless:

(a) The nonproject LOS is D or better and the applicant agrees to fund improvements needed to attain LOS D or better;

(b) The nonproject LOS is E or F and the applicant agrees to fund improvements to LOS E or better;

(c) The applicant achieves LOS E by phasing the project or using transportation demand management (TDM) techniques to reduce the number of peak hour trips generated by the project;

(d) The Planning Director has established a date for final approval of subdivisions to become effective corresponding with the anticipated date of award of a construction contract for City, County, or State improvements needed to provide LOS D or better, or when the calculated nonproject LOS is E or F, to provide LOS E or better; provided such effective approval date may be established only when the anticipated date of award of construction contract is within 12 months of final approval; or

(e) The roadway or intersection has already been improved to its ultimate roadway section and the applicant agrees to use TDM incentives and/or

phase the development proposal as determined by the Public Works Director.

(f) The necessary financial commitments are in place to assure the completion of the needed improvements to meet the district's standard of service within six years of the time that the impacts of development are expected to occur. Necessary improvements are those facilities identified by the district in its capital facilities plan.

(2) Developments proposed which will have a direct impact, as defined by WMC 21.06.168, on City traffic facilities or designated areas pursuant to WMC 21.28.080 may attain the LOS specified in the adopted interlocal agreements rather than meeting WMC 21.28.070.

(3) The Public Works Director may identify by ordinance intersections exempt from the level of service standards where existing levels of service are F and the improvements to the intersection are not financially or environmentally feasible as determined by the Public Works Director. Other mitigation measures may be required as described in the policies under Comprehensive Plan goal T-7.

(4) The developer is required to conduct an evaluation of the impacts of the development via level of service standards. The evaluation shall be reviewed by the Public Works Director. (Ord. 242 § 8, 1999; Ord. 175 § 1, 1997)

21.28.100 Reserved.

(Ord. 242 § 8, 1999; Ord. 175 § 1, 1997)

21.28.110 Exceptions.

(1) Exceptions from the standards of WMC 21.28.060 and 21.28.070 may be granted only when extraordinary circumstances make compliance with the standards infeasible or when a traffic impact or mitigation fee is proposed.

(2) For those developments proposed where the Hearing Examiner makes a recommendation to the City Council, the record must reflect the basis for the exception, and the approving ordinance must grant the exception in order for it to be effective. The ordinance approving the proposal shall be determinative and conclusive as to the proposal's compliance with this chapter.

(3) For developments proposed for which the Hearing Examiner decision is final, the decision of the Hearing Examiner shall be determinative and conclusive as to the proposal's compliance with this chapter.

(4) For permits which are administrative and ministerial for which no appeal is normally available, the issue of the application of the standards in this chapter to a development proposed may be

appealed to the Hearing Examiner for a final decision. Such an appeal together with appeal arguments shall be filed with the Planning Director within 10 days of decision. (Ord. 242 § 8, 1999; Ord. 175 § 1, 1997)

21.28.120 Adequate vehicular access.

All new development shall be served by adequate vehicular access as follows:

(1) The property upon which the development proposed is to be located has direct access to:

(a) A public or private street, other than a half-street, that meets City street standards or is formally declared acceptable by the Public Works Director; or

(b) The property has access to such a street over a private driveway approved by the Public Works Director;

(2) The proposed circulation system of a proposed subdivision, short subdivision or binding site plan shall intersect with existing and anticipated streets abutting the site at safe and convenient locations, as determined by the Public Works Director; and

(3) Every lot upon which one or more buildings is proposed to be erected or traffic generating use is proposed to be established shall establish safe access as follows:

(a) Safe passage from the street right-of-way to building entrances for transit patrons and other pedestrians, in accordance with the design standards set forth in Chapter 21.18 WMC;

(b) Direct access from the street right-of-way, fire lane or a parking space to any part of the property as needed to provide public services in accordance with adopted standards (e.g., fire protection, emergency medical service, mail delivery or trash collection); and

(c) Direct access from the street right-of-way, driveway, alley or other means of ingress/egress approved by the Public Works Director to all required off-street parking spaces on the premises. (Ord. 175 § 1, 1997)

21.28.130 Adequate fire protection.

All new development shall be served by adequate fire protection as set forth below:

(1) The site of the development proposed is served by a water supply system that provides at least minimum fire flow and a road system or fire lane system that provides life safety/rescue access, and other fire protection requirements for buildings as required by the Uniform Fire Code and Uniform Building Code as adopted by the City;

(2) For a zone reclassification, the timing of installation of required fire protection improvements shall be stated in the approving ordinance, secured with a bond or similar security, and deposited with the Building Official; and

(3) A variance request from the requirements established by the Uniform Fire Code shall be reviewed and does not require a variance from this title unless relief is requested from a building height, setback, landscaping or other development standard set forth in Chapters 21.12 through 21.38 WMC. (Ord. 175 § 1, 1997)

21.28.140 School concurrency – Applicability and relationship with fees.

(1) The concurrency standard set out in WMC 21.28.160 shall apply to applications for preliminary plat which would result in the creation of new residential building lots or mobile home parks or the construction of new dwelling units, requests for multifamily zoning, and building permits for multifamily housing projects which have not been previously evaluated for compliance with the concurrency standard.

(2) The City's finding of concurrency shall be made at the time of preliminary plat approval, at the time that a request to actualize potential multifamily zoning is approved, or prior to building permit issuance for multifamily housing projects which have not been previously established for compliance with the concurrency standard. Once such a finding has been made, the development shall be considered as vested for purposes of the concurrency determination.

(3) Excluded from the application of the concurrency standard are building permits for individual single-family dwellings (except as required for school impact fees), any form of housing exclusively for the elderly, including nursing homes and retirement centers. Also excluded from the application of the concurrency standard are shelters for temporary placement, relocation facilities and transitional housing facilities. Replacement reconstruction or remodeling of existing dwelling units is not subject to the provisions of this chapter.

(4) Also excluded from the application of the concurrency standard set out in this chapter are short subdivisions.

(5) All of the development activities which are excluded from the application of the concurrency standard are subject to school impact fees, when established by the City. (Ord. 242 § 8, 1999; Ord. 175 § 1, 1997)

21.28.150 Findings, recommendations, and decisions regarding school capacities.

(1) The Planning Director and/or the Hearing Examiner, in the course of reviewing proposals for residential development including applications for plats or multifamily zoning, and multifamily building permits, shall consider the school district's capital facilities plan as adopted in the City's Comprehensive Plan.

(2) Documentation which the district is required to submit shall be incorporated into the record in every case without requiring the district to offer such plans and data into the record. The school district is also authorized to present testimony and documents demonstrating a lack of concurrence in the district and the inability of the district to accommodate the students to be generated by a specific development.

(3) Based upon a finding that the impacts generated by the plat or the multifamily development were generally not anticipated at the time of the last City Council review and approval of a school district capital plan and were not included in the district's long-range forecast, the Planning Director may require or recommend phasing or provision of the needed facilities and/or sites as appropriate to address the deficiency or deny or condition approval, consistent with the provisions of this chapter, the State Subdivision Act, and the State Environmental Policy Act.

(4) Determinations of the Hearing Examiner or Planning Director regarding concurrence can be appealed only pursuant to the provisions for appeal of the development permit process for which the determination has been made.

(5) Where the City Council has not adopted an impact fee ordinance for a particular school district, the language of this section shall not affect the authority or duties of the Hearing Examiner or the Planning Director pursuant to the State Environmental Policy Act or the State Subdivision Act. (Ord. 175 § 1, 1997)

21.28.160 School concurrency standard.

(1) Schools shall be considered to have been provided concurrently with the development which will impact the schools if:

(a) The permanent and interim school improvements necessary to serve the development are planned to be in place at the time the impacts of development are expected to occur; or

(b) The necessary financial commitments are in place to assure the completion of the needed improvements to meet the district's standard of ser-

vice within six years of the time that the impacts of development are expected to occur. Necessary improvements are those facilities identified by the district in its capital facilities plan, as adopted by the City's Comprehensive Plan.

(2) Any combination of the following shall constitute the "necessary financial commitments" for the purposes of subsection (1) of this section:

(a) The district has received voter approval of and/or has bonding authority;

(b) The district has received approval for federal, state, or other funds;

(c) The district has received a secured commitment from a developer that the developer will construct the needed permanent school facility, and the school district has found such facility to be acceptable and consistent with its capital facilities plan; and/or

(d) The district has other assured funding, including but not limited to school impact fees which have been paid.

(3) Compliance with this concurrency requirement of this section shall be sufficient to satisfy the provisions of RCW 58.17.060 and 58.17.110. (Ord. 242 § 8, 1999; Ord. 175 § 1, 1997)

21.28.170 Reserved.

(Ord. 242 § 8, 1999; Ord. 175 § 1, 1997)

21.28.180 Credit for improvements.

Whenever a development is granted approval subject to a condition that the development proponent actually provide a school facility acceptable to the district, the development proponent shall be entitled to a credit for the actual cost of providing the facility, against the fee that would have been charged. The cost of construction shall be estimated at the time of approval, but must be documented and the documentation confirmed after the construction is completed to assure that an accurate credit amount is provided. If construction costs are less than the calculated fee amount, the difference remaining shall be chargeable as a school impact or mitigation fee. (Ord. 242 § 8, 1999; Ord. 175 § 1, 1997)

Appendix I

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Appendix I

3.33.210 Violation – Unlawful acts.

It is unlawful, and shall be a violation of this chapter, for any person liable to tax hereunder to fail or refuse to secure the utility occupation license, to make the returns when required, or to pay the license fee or tax when due, or for any person to make any false or fraudulent application or return or any false statement or return or any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in an attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear and/or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the City or any of its officers in carrying out the provisions of this chapter. (Ord. 200 § 1, 1998)

3.33.220 Sunset.

Repealed by Ord. 250. (Ord. 200 § 1, 1998)

Chapter 3.36**PARK IMPACT FEES****Sections:**

- 3.36.010 Purpose.
- 3.36.020 Authority.
- 3.36.030 Definitions.
- 3.36.040 Applicability.
- 3.36.050 Exemptions.
- 3.36.055 Affordable housing – Accessory housing exemption.
- 3.36.060 Service area.
- 3.36.070 Impact fee account funds established.
- 3.36.080 Use of funds.
- 3.36.090 Impact fee assessment and collection.
- 3.36.100 Impact fee adjustments, independent calculations.
- 3.36.110 Impact fee credits.
- 3.36.120 Impact fee refunds.
- 3.36.130 Appeals and payments under protest.
- 3.36.140 Council review of impact fees.
- 3.36.160 Impact fee calculations.
- 3.36.170 Schedule of fees.

3.36.010 Purpose.

This chapter is intended to:

- (1) Assist in the implementation of the comprehensive plan for the City of Woodinville.
- (2) Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below established minimum standards for the City.
- (3) Establish standards and procedures so that new development pays a proportionate share of costs for new facilities and services and does not pay arbitrary or duplicative fees for the same impact. (Ord. 279 § 1, 2001)

3.36.020 Authority.

(1) This chapter is enacted pursuant to the Washington State Growth Management Act codified at Chapter 36.70A RCW and at RCW 82.02.050 to 82.02.100.

(2) The City has conducted studies documenting costs and demand for new facilities and services. These studies are included in the parks, recreation and open space plan, and are hereby incorporated into this chapter by reference as if set forth in full. The comprehensive plan and all of the related documents are incorporated into the chapter by reference. (Ord. 279 § 1, 2001)

3.36.030 Definitions.

(1) Dwelling Unit. See definition in WMC 21.06.180.

(2) "Encumber" means to transfer funds from the general park impact fee fund to an account created to fund, in whole or in part, a particular system improvement. Once funds have been encumbered they cannot be used to fund any other system improvement. Funds may only be encumbered by an action of the City Council.

(3) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the City Council shall be considered a project improvement.

(4) "System improvements" means park facilities that are included in the City's six-year capital facilities plan and are designed to provide service to the community at large, in contrast to project improvements. (Ord. 279 § 1, 2001)

3.36.040 Applicability.

All persons receiving building permits for dwelling units within the City of Woodinville after March 24, 2001, shall be required to pay impact fees in an amount and manner set forth in this chapter. (Ord. 279 § 1, 2001)

3.36.050 Exemptions.

The following development activities are exempt from paying park impact fees because they do not have a measurable impact on the City's park facilities, or because the City has chosen to exempt them pursuant to RCW 82.02.060(2).

(1) Existing Dwelling Unit. Any alteration, expansion, reconstruction, remodeling or replacement of existing single-family or multifamily dwelling units that does not result in the creation of additional dwelling units.

(2) Facilities for Long-Term Care. Any housing facility or long-term care facility exclusively providing any or all of the following services as defined in RCW 74.39A.009: "assisted living services," "enhanced adult residential care," or "nursing home"; provided, that this exemption ceases if the housing facility is later converted to permanent use as a single-family or multifamily residence not providing such services, in which case impact fees would be imposed at that point; and provided further, that where a housing facility provides a mixture of independent senior housing in combination

with any of the above mentioned services, the exemption shall be limited to that portion of the facility providing such services, and the impact fee shall be appropriately calculated on a per dwelling unit basis for that portion of the facility not providing such services.

(3) Temporary Accommodation. Any dwelling unit licensed and operated as transient accommodations under Chapter 70.62 RCW and WAC 248-144-026(26), such as hotels, motels, condominiums and resorts; provided, that this exclusion ceases if the housing is later converted to permanent use as a single-family or multifamily residence not subject to such restrictions. (Ord. 279 § 1, 2001)

3.36.055 Affordable housing – Accessory housing exemption.

In addition to the exemptions in WMC 3.36.050, the following shall be exempt from the requirement to pay all impact fees:

(1) Any accessory dwelling unit as that term is defined in WMC 21.06.183.

(2) Low- or moderate-income housing projects developed or owned by public housing agencies or private nonprofit housing developers.

(3) Residential housing units dedicated for occupancy by low- or moderate-income households and whose rents or purchase price is affordable to low- or moderate-income persons under the regulations of the U.S. Department of Housing and Urban Development or its successor.

(4) Individual low- or moderate-income dwelling units (as defined in the current King County Comprehensive Housing Affordability Strategy (CHAS)) to be purchased by households with prices within their eligibility limits based on standard lending criteria.

(5) As a condition of receiving an exemption under this section, the owner shall execute and record in King County's real property title records a City-drafted lien, covenant or other contractual provision against the property that provides that the proposed housing unit or development will continue to be used for low- or moderate-income housing and remain affordable to those households under the regulations of the U.S. Department of Housing and Urban Development. The term of this provision shall be 10 years for individual owners and 15 years for private and private nonprofit developers/builders. The lien, covenant, or other contractual provision shall run with the land and apply to subsequent owners and assigns. In the event that the housing unit(s) is no longer used for low- or moderate-income housing during the term

of the provision, then the owner shall pay the amount of impact fees from which the housing unit(s) was exempted into the City's account for paying low- and moderate-income impact fees.

(6) Any claim or request for an exemption under this section shall be made no later than the time of issuance of a building permit. Any claim not made when required by this section shall be deemed waived.

(7) The impact fees not collected from low- and moderate-income housing shall be paid from public funds from sources other than impact fees or interest on impact fees and budgeted for this purpose by the Woodinville City Council.

(8) If claims or requests for exemptions under this section exceed the funds the Woodinville City Council has budgeted for the payment of impact fees for low- and moderate-income housing and accessory housing, this section shall not apply to claims or requests for exemptions under this section made after the budgeted funds were committed or allocated until additional funds are budgeted. (Ord. 279 § 1, 2001)

3.36.060 Service area.

The service area established in this section assures a proportional benefit of public facilities to development applicants and establishes a nexus between those paying for the fees and those benefiting from the capital facilities. Because the City's size allows its park and recreation facilities to provide a reasonable benefit to its entire population regardless of their location within the City, the service area for the park impact fee shall be the entire City of Woodinville. (Ord. 279 § 1, 2001)

3.36.070 Impact fee account funds established.

There is hereby created and established a special purpose park and recreation facilities impact fee fund ("the park impact fee fund") to receive park impact fees. All park impact fees and any investment income generated by such fees shall be deposited into the park impact fee fund. Procedures for administration of the funds shall be established by the Finance Director. These funds shall be expended in accordance with the City's normal budget procedures subject to the limitations set forth in WMC 3.36.080 and RCW 82.02.070. Annually, the City shall prepare a report on the impact fee account showing the source and amount of all monies collected, interest earned, and capital or system improvements that were financed in whole or in part by these impact fees. (Ord. 279 § 1, 2001)

3.36.080 Use of funds.

(1) Park impact fees shall be used for development of parks, open space, passive recreation parks, linear trail parks, and recreation facilities to serve new growth and development in Woodinville; provided, that such impact fees may only be spent on system improvements.

(2) Impact fees may be spent on the following items to the extent that they relate to a particular system improvement: facility planning, land acquisition, site improvements, necessary off-site improvements, facility construction, facility engineering and design work, facility permitting fees, facility financing, grant matching funds, applicable mitigation costs, capital equipment pertaining to public facilities, and any other expenses which can be capitalized and are consistent with the capital facilities plan.

(3) Impact fees may also be used to recoup park facility improvement costs previously incurred to the extent that new growth and development will be served by the previously acquired or constructed improvements or incurred costs.

(4) In the event that bonds or similar debt instruments are or have been issued for the construction of public facility or system improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this chapter and are used to serve new development. The capital facilities plan should distinguish between facilities and funds needed to serve new development and those facilities and funds needed to correct existing deficiencies. (Ord. 279 § 1, 2001).

3.36.090 Impact fee assessment and collection.

(1) City staff shall determine the total impact fee owed at the time of building permit issuance based on the fee schedule in effect at the time of such issuance.

(2) Impact fee collection shall also occur at the time of building permit issuance. (Ord. 279 § 1, 2001)

3.36.100 Impact fee adjustments, independent calculations.

A fee payer may request an adjustment to the impact fees determined according to the fee schedule adopted by this chapter by preparing and submitting to the Parks and Recreation Department an independent fee calculation for the development activity for which a building permit is sought. The

documentation submitted shall show the basis upon which the independent fee calculation was made.

(1) If the Department agrees with the independent fee calculation, a written agreement to accept such amount shall be transmitted to the fee payer who shall, in turn, present it to the Permit Center upon impact fee collection.

(2) If the Department does not agree with the independent fee calculation, the fee payer may appeal this decision to the Hearing Examiner through procedures outlined in WMC 2.30.060. (Ord. 279 § 1, 2001)

3.36.110 Impact fee credits.

(1) A developer shall be entitled to a credit against the park impact fee collected under the fee schedule adopted by this chapter in any of the following situations:

(a) Whenever a project is granted approval subject to a condition that the developer actually provide system improvements; or

(b) Whenever a developer has agreed, pursuant to the terms of a voluntary agreement with the City, to provide land for system improvements; or

(c) Whenever a developer has agreed to make system improvements to existing park facilities; or

(d) Whenever a developer has paid a park mitigation fee which is allocated toward providing system improvements.

(2) If, in any of the cases in subsection (1) of this section, the land dedicated, facility constructed, or fee paid is allocated partly toward system improvements and partly toward project improvements, the credit shall be limited to that portion allocated to system improvements.

(3) For the purposes of calculating the credit, the land value or costs of construction shall be determined as follows:

(a) The amount of credit for land dedicated shall be the higher of either the value of the land established in the parks, recreation, and open space plan, if such value is identified, or by an appraisal conducted by an independent professional appraiser chosen by the fee payer from a list of at least three such appraisers provided by the City. Either the fee payer or the City may request an appraisal, in which event the cost of the appraisal shall be borne by the requesting party. For the purposes of this section, the date of value shall be the date the land was dedicated to the City.

(b) The amount of credit for facilities constructed shall be based upon the actual cost of construction at the time of construction.

(4) In cases where a developer would be entitled to a credit under this section, but the amount of the credit has yet to be determined on a per dwelling unit basis, the City shall take the total credit amount available to the entire plat or project, calculated by applying subsections (1) through (3) of this section, and divide that amount by the number of dwelling units planned for that plat or project. The impact fee and credit may then be calculated and collected on a per dwelling unit basis as building permits are issued. Where building permits for some, but not all, of the dwelling units within a plat or project have already been obtained at the time the ordinance codified in this chapter becomes effective, the credit for the unpermitted dwelling units will be calculated to arrive at a per dwelling unit amount in the same manner. For example, if a plat is planned for 20 dwelling units, and building permits have only been issued for 10 of those units, the per dwelling unit credit for the remaining 10 units will equal the total credit amount divided by 20.

(5) The fee payer shall be entitled to such credit against the impact fee regardless of whether the system improvement was provided before or after March 24, 2001.

(6) Determinations made pursuant to this section may be appealed to the Examiner under WMC 2.30.060.

(7) A credit must be requested within 30 days of building permit issuance or it is deemed waived.

(8) No refund will be allowed in the event that the impact fee credit exceeds the amount of the impact fee itself. (Ord. 279 § 1, 2001)

3.36.120 Impact fee refunds.

(1) The current owner of property on which impact fees have been paid may receive a refund of such fees if the impact fees have not been expended or encumbered within six years of their receipt by the City. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first in, first out basis.

(2) The City shall provide for the refund of fees according to the requirements of this section and RCW 82.02.080.

(a) The City shall notify potential claimants of the refund availability by first-class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the King County tax records.

(b) An owner's request for a refund must be submitted to the City Finance Director in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later.

(3) Any impact fees that are not expended or encumbered within six years of their receipt by the City, and for which no application for a refund has been made within this one-year period, shall be retained by the City and expended consistent with the provisions of this chapter.

(4) Refunds of impact fees shall include any interest earned on the impact fees.

(5) Should the City seek to terminate any or all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which an impact fee was paid. Upon the finding that any or all fee requirements are to be terminated, the City shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail addressed to the owner of the property as shown in the King County tax records. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the City, but must be expended for the original purposes, consistent with the provisions of this section. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

(6) A developer may request and shall receive a refund, including interest earned on the impact fees, when:

(a) The developer does not proceed to finalize the development activity as required by statute or City code or the Uniform Building Code; and

(b) The City has not expended or encumbered the impact fees prior to the application for a refund. In the event that the City has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit against any then-existing park impact fee requirement. The owner must petition the City in writing and provide receipts of impact fees paid by the owner for a development of the same or substantially similar nature on the same property or some portion thereof. The City shall determine whether to grant a credit and such deter-

minations may be appealed by following the procedures set forth in this chapter.

(7) The amount to be refunded shall include the interest earned by this portion of the account from the date that it was deposited into the impact fee fund. (Ord. 279 § 1, 2001)

3.36.130 Appeals and payments under protest.

(1) An appeal of the initial decision of the City with regard to the imposition of an impact fee or the amount of any impact fees, impact fee credit, or impact fee refund may be taken before the Hearing Examiner pursuant to WMC 2.30.060. The right to such an administrative appeal is triggered by the City's issuance or denial of a building permit.

(2) Any applicant may pay the impact fees imposed by this chapter under protest in order to obtain a building permit. (Ord. 279 § 1, 2001)

3.36.140 Council review of impact fees.

The impact fee schedule adopted by this chapter shall be reviewed by the City Council, as it deems necessary and appropriate in conjunction with the annual update of the capital facilities plan element of the City's Comprehensive Plan. (Ord. 279 § 1, 2001)

3.36.160 Impact fee calculations.

(1) The park impact fee shall be calculated using the same schedule for all dwelling units regardless of type.

(2) The park impact fee schedule shown in this chapter has been calculated using the formula shown in Attachment A at the end of this chapter.

(3) The fee schedule based on this formula is the City's determination of the appropriate share of system improvement costs to be paid by new growth and development. (Ord. 399 § 3, 2005; Ord. 279 § 1, 2001)

3.36.170 Schedule of fees.

A park impact fee shall be assessed against all new residential development in the amount of \$3,175 per dwelling unit. (Ord. 399 § 2, 2005; Ord. 279 § 1, 2001)

Attachment A

The Woodinville park impact fee shall be calculated according to the following formula:

$$(TV \div DU) \times AI = \text{Impact Fee}$$

(rounded to the nearest dollar)

Where:

TV represents the total value of park land within the City; and

DU represents the total number of dwelling units within the City; and

AI is a percentage that represents the actual investment in TV made by existing Woodinville residents once grant funding and other external sources of capital funding for parking facilities have been subtracted.

Currently, the figures are as follows:

TV = \$14,893,954

DU = 3,890

AI = 83.03%

So the impact fee is derived as follows:

$$\$14,893,954 \div 3,890 \times 83.03\% = \$3,175$$

Chapter 3.39

TRANSPORTATION IMPACT FEES

Sections:

3.39.010	Purpose.
3.39.020	Authority.
3.39.030	Definitions.
3.39.040	Applicability.
3.39.050	Exemptions.
3.39.055	Affordable housing/accessory housing exemption.
3.39.060	Service area.
3.39.070	Transportation impact fee fund established.
3.39.080	Use of funds.
3.39.090	Impact fee determination and collection.
3.39.100	Impact fee adjustments, independent calculations.
3.39.110	Impact fee credits.
3.39.120	Impact fee refunds.
3.39.130	Appeals and payments under protest.
3.39.140	Council review of impact fees.
3.39.160	Impact fee calculations.
3.39.170	Schedule of fees.

3.39.010 Purpose.

This chapter is intended to:

(1) Assist in the implementation of the Comprehensive Plan for the City of Woodinville.

(2) Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use, or shortly thereafter, without decreasing current service levels below established minimum standards for the City.

(3) Establish standards and procedures so that new development pays a proportionate share of costs for new facilities and services and does not pay arbitrary or duplicative fees for the same impact. (Ord. 356, 2004)

3.39.020 Authority.

(1) This chapter is enacted pursuant to the Washington State Growth Management Act codified at Chapter 36.70A RCW and at RCW 82.02.050 to 82.02.100.

(2) The City has conducted studies documenting costs and demand for new facilities and services. These studies are attached to the ordinance codified in this chapter as Attachment A, and are hereby incorporated into this chapter by reference as if set forth in full. The City of Woodinville Com-

Appendix J

Hernandez v. City of
Hanford
41 Cal. 4th 279 (2007)

Appendix J

Westlaw

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(Cite as: 41 Cal.4th 279, 159 P.3d 33)

H

Hernandez v. City of Hanford
Cal., 2007.

Supreme Court of California
Adrian **HERNANDEZ** et al., Plaintiffs and
Appellants,

v.

CITY OF HANFORD et al., Defendants and
Respondents.
No. S143287.

June 7, 2007.

Background: Small retail store owners sued city to challenge the constitutionality of city's amendment to zoning ordinance that allowed department stores with 50,000 or more square feet of floor space to sell furniture in specific commercial district, while denying that right to smaller retailers. The Superior Court, Kings County, No. 03C0296, Peter M. Schultz, J., upheld constitutionality of ordinance, and store owners appealed. The Court of Appeal reversed. The Supreme Court granted city's petition for review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, George, C.J., held that:

(1) zoning ordinances could regulate economic competition to advance legitimate public purpose; disapproving *Van Sicklen v. Browne*, 15 Cal.App.3d 122, 92 Cal.Rptr. 786, *Ensign Bickford Realty Corp. v. City Council*, 68 Cal.App.3d 467, 137 Cal.Rptr. 304, *Wal-Mart Stores, Inc. v. City of Turlock*, 138 Cal.App.4th 273, 41 Cal.Rptr.3d 420;

(2) city's ordinance was not improper limitation on competition; and

(3) city's ordinance did not violate equal protection.

Judgment of the Court of Appeal reversed.

Opinion, 40 Cal.Rptr.3d 905, superseded.

West Headnotes

[1] Zoning and Planning 414 ↩27

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(A) In General

414k27 k. Public Health, Safety, Morals or General Welfare. Most Cited Cases

Even when regulation of economic competition reasonably can be viewed as direct and intended effect of zoning ordinance or action, so long as primary purpose of ordinance or action is not impermissible private anticompetitive goal of protecting or disadvantaging a particular favored or disfavored business or individual, but instead is advancement of legitimate public purpose, ordinance reasonably relates to general welfare of municipality and constitutes legitimate exercise of municipality's police power; disapproving *Van Sicklen v. Browne*, 15 Cal.App.3d 122, 92 Cal.Rptr. 786, *Ensign Bickford Realty Corp. v. City Council*, 68 Cal.App.3d 467, 137 Cal.Rptr. 304, *Wal-Mart Stores, Inc. v. City of Turlock*, 138 Cal.App.4th 273, 41 Cal.Rptr.3d 420.

See 8 Witkin, *Summary of Cal. Law* (10th ed. 2005) *Constitutional Law*, § 1020; *Cal. Jur. 3d, Zoning and Other Land Controls*, § 77 et seq.; *Cal. Civil Practice* (Thomson/West 2003) *Real Property Litigation*, § 14:13 et seq.

[2] Zoning and Planning 414 ↩75

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(B) Regulations as to Particular Matters

414k75 k. Business, Commercial, and

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Industrial Districts. Most Cited Cases

City's zoning ordinance that allowed department stores in specific commercial district with 50,000 or more square feet of floor space to sell furniture within 2,500-square-foot area, while denying that right to smaller retailers in district, was not improper limitation on competition, since ordinance was adopted to promote legitimate public purpose of preserving economic viability of city's downtown business district, rather than to serve any impermissible private anticompetitive purpose.

[3] Constitutional Law 92 3512

92 Constitutional Law

92XXVI Equal Protection

92XXVI(E) Particular Issues and Applications

92XXVI(E)3 Property in General

92k3511 Zoning and Land Use

92k3512 k. In General. Most Cited

Cases

Zoning and Planning 414 75

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(B) Regulations as to Particular Matters

414k75 k. Business, Commercial, and

Industrial Districts. Most Cited Cases

City's zoning ordinance that allowed department stores in specific commercial district with 50,000 or more square feet of floor space to sell furniture within 2,500-square-foot area, while denying that right to smaller retailers in district, did not violate equal protection; ordinance was rationally related to city's two purposes of preserving economic viability of city's downtown business district, which included many small furniture stores, and attracting large department stores to commercial district. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law 92 3512

92 Constitutional Law

92XXVI Equal Protection

92XXVI(E) Particular Issues and Applications

92XXVI(E)3 Property in General

92k3511 Zoning and Land Use

92k3512 k. In General. Most Cited

Cases

Equal protection challenge to city's zoning ordinance that allowed department stores with 50,000 or more square feet of floor space to sell furniture in specific commercial district, while denying that right to smaller retailers, was subject to rational relationship or rational basis standard of judicial review; ordinance did not involve suspect classifications or touch upon fundamental interests. U.S.C.A. Const.Amend. 14.

***443 Motschieder, Michaelides & Wishon and Russell K. Ryan, Fresno, for Plaintiffs and Appellants.

Deborah J. La Fetra and Timothy Sandefur, Sacramento, for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiffs and Appellants.

Howard Rice Nemerovski, Canady Falk & Rabkin, Steven L. Mayer, San Francisco; Kahn, Soares & Conway, Michael J. Noland, Hanford, and Rissa A. Stuart, for Defendants and Respondents.

Hanson Bridgett Marcus Vlahos & Rudy and Thomas B. Brown, San Francisco, for League of California Cities and California State Association of Counties as Amici Curiae on behalf of Defendants and Respondents.

GEORGE, C.J.

**35 *282 This case involves a constitutional challenge to a zoning ordinance enacted by the City of Hanford in 2003. In order to protect the economic viability of Hanford's downtown commercial district—a prominent feature of which is a large number of regionally well-regarded retail furniture stores—the challenged ordinance generally prohibits the sale of furniture in another commercial district in Hanford (currently designated the Planned Commercial or PC district) that contains a large shopping mall in which several department stores as well as other retail stores are located. At the same time, the ordinance creates a limited exception to the general prohibition on the sale of furniture in the PC district, permitting large department stores (those with 50,000 or more square feet of floor space) located within *283 that district to sell furniture within a specifically prescribed area (occupying no more than 2,500

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square feet of floor space) within the department store.

The owners of a "stand-alone" home furnishings and mattress store located within the PC district, who wished to sell bedroom furniture along with mattresses and home accessories (such as lamps and carpets) in their store, brought this action contesting the validity of the foregoing provisions of the zoning ordinance. The trial court rejected the constitutional challenge, but the Court of Appeal disagreed with the trial court's determination. The Court of Appeal concluded that although the ordinance's general prohibition of the sale of furniture in the PC district was reasonably related to a legitimate governmental interest—the preservation of the economic viability of the downtown commercial district—the ordinance's exception permitting limited furniture sales only by large department stores in the PC district violated equal protection principles by drawing an unwarranted distinction between large department stores and other retail stores located within the PC district. The appellate court reasoned that "when all retailers limit the furniture display space in compliance with the ordinance to the permitted 2,500 square feet, the difference in total floor space between the retailers***444 is largely irrelevant. Thus, the disparate treatment of these similarly situated retailers based on square footage is not rationally related to the purpose behind the ordinance and is unconstitutional as a violation of equal protection." We granted the city's petition for review to consider the validity of the Court of Appeal's determination that the ordinance is unconstitutional.

For the reasons discussed below, we conclude that the Court of Appeal erred in finding the ordinance unconstitutional. As we shall explain, the appellate court's analysis fails adequately to take into account the *two* legitimate purposes underlying the ordinance in question: (a) the objective of protecting and preserving the economic viability of the city's downtown commercial district by generally prohibiting within the PC district a particular retail activity—the sale of furniture—that is a prominent feature of the downtown commercial district, and (b) the objective of attracting to, and

retaining within, the city's PC district the type of large department stores (which typically carry furniture) that the city views as essential to the economic viability of the PC district. Restricting the ordinance's limited exception for the sale of furniture within the PC district to sales by large department stores—and only such stores—is rationally related to the second of these legislative purposes served by the ordinance.

Accordingly, we conclude that the decision rendered by the Court of Appeal, invalidating the zoning ordinance here at issue, must be reversed.

*284 I

In 1989, the City of Hanford amended its general plan to provide for a new commercial district in the vicinity of 12th Avenue and Lacey Boulevard. This new district originally**36 was designated the Regional Commercial district but later was renamed the Planned Commercial or PC district. The district encompassed several hundred acres of land and was intended to accommodate the location of malls, large "big box" stores, and other retail uses.

At trial, Jim Beath, the city's community development director, testified regarding the background of the city's adoption of the new district in 1989. (Beath had been the city's community development director in 1989 and continued to occupy that position at the time of trial in 2005.) Beath explained that when the city was considering the creation of the new district in 1989, it was concerned that the extent of anticipated commercial development in the proposed district might well have a negative effect on the city's downtown commercial district. In light of that concern, the city council appointed the Retail Strategy Development Committee (the Committee) "made up of people from the mall area as well as the downtown district and other citizens." The Committee was asked to propose land use rules for the new district that would "provide for the large box and other kinds of retail use that the City ... had

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grown to need and yet still make sure that [the new district] didn't have a negative impact on the downtown district."

The Committee ultimately recommended that certain designated uses generally not be permitted in the new district, and Beath testified that those uses "were ones that were already established in the downtown district that they didn't want to see removed from the downtown district and relocate[d] out at the planned commercial district, and those were car dealerships, banks, professional offices, and furniture stores." In establishing the new district, the city council limited the uses that were to be permitted in that district in line with the Committee's recommendations.

Accordingly, as relevant here, the 1989 ordinance included department stores and ***445 the sale of home furnishings within the list of permitted uses within the new district, but did not include furniture stores or the sale of furniture as a permitted use. The 1989 ordinance, however, did not specifically define "department store" or "home furnishings," and did not explicitly state whether department stores located within the new district would or would not be permitted to sell furniture. (As we shall see, from the outset the department stores that were built and operated within the new district did sell some types of furniture, but the validity of this practice of the department stores under the terms of the 1989 ordinance apparently never was challenged or judicially resolved prior to the controversy that led to the enactment of the 2003 amendment here at issue.)

*285 In the fall of 2002, more than a decade after establishment of the PC district, plaintiffs Adrian and Tracy Hernandez leased space in a building located in the PC district with the intent to establish a new business at that location to be called Country Hutch Home Furnishings and Mattress Gallery (hereafter Country Hutch Home Furnishings). For more than 10 years preceding the time they proposed to start this new business, plaintiffs had owned and operated a retail furniture store, the Country Hutch, that was located in the city's downtown commercial district.^{FN1} In planning for the new store, plaintiffs intended to sell

mattresses, home accessories, and some bedroom furniture at their new location in the PC district.

FN1. At trial, Tracy Hernandez referred only to her and her husband's ownership of one furniture store in downtown Hanford, the Country Hutch. Other documents in the record indicate that in 2002 there were two furniture stores with similar names-the Country Hutch and the Country Hutch Outlet-among the more than one dozen retail furniture stores located in downtown Hanford. The record does not indicate whether plaintiffs owned the Country Hutch Outlet as well as the Country Hutch.

Prior to the opening of the new business, Tracy Hernandez met with Beath, the city's community development director, who informed her that under the governing zoning ordinance the new store would not be permitted to sell furniture. Although the then existing provisions governing the PC district did not contain any specific definition of the term "home furnishings"-the sale of which was a permitted use in the PC district-Beath testified that the city, as an administrative**37 matter, uniformly had interpreted "home furnishings" as used in the ordinance to mean "accessories to furniture, ... not furniture," that is, objects such as "lamps, wall hangings, mirrors, blinds, drapes, things of that sort." Beath testified that he informed Tracy Hernandez of that limitation well before the opening of the store. In her testimony, Tracy Hernandez acknowledged that Beath had informed her that the proposed store in the PC district could not sell furniture.

In November 2002, the city adopted a number of amendments to its general plan and zoning ordinance, including a revision in the list of permitted uses in the PC zone changing the term "home furnishings" to "home furnishing accessories (not furniture)." Beath testified at trial that this amendment did not represent a substantive change in the meaning of the term "home furnishings" or the manner in which that term had been applied by city officials, but simply was intended "to clarify it by adding the words 'not furniture.'"

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From November 2002 to January 2003, plaintiffs continued with their plans to open and operate the Country Hutch Home Furnishings store in the PC district, and in February 2003 the city issued a certificate of occupancy to *286 plaintiffs stating that the building in question could be used ***446 to sell "home furnishing accessories," but also specifying that this term excluded "all types of furniture." FN2

FN2. The relevant condition of the certificate of occupancy stated in full: "Subject to obtaining any and all required approvals from the City of Hanford, the merchandise that may be sold at the site is limited to that merchandise identified in Section 17.28.040 of the Hanford Municipal Code, a copy of which is attached hereto. The term 'Home Furnishing Accessories' is defined as household decorative items that accompany furniture in the decorating of room[s]. Examples include, bedding (including mattresses and bed frames), mirrors, artwork and similar accessory items. Excluded from the definition of 'Home Furnishing Accessories' are all types of furniture."

After receiving the certificate of occupancy, plaintiffs opened the Country Hutch Home Furnishings store. Soon thereafter a city inspector, citing plaintiffs for violating the zoning ordinance by offering furniture for sale in their new store, instructed them to remove all of the furniture from the store. Plaintiffs thereafter sent a letter to the members of the Hanford City Council, complaining that the zoning code was being applied in a discriminatory fashion because numerous department stores in the PC district were selling furniture and had not been cited by the city, while plaintiffs were cited for engaging in the same conduct.

On March 4, 2003, one week after receiving plaintiffs' letter, the city council held a "study session" to consider the issues raised by plaintiffs' letter. Plaintiffs, as well as representatives of the

downtown furniture stores and representatives of the PC district department stores, attended and participated in the study session. Prior to the March 4 session the city's community development department, conducting a survey of the merchandise offered for sale in the existing large department stores located in the PC district, found that each of those stores currently was selling "some type of furniture"-generally, either furniture that was "purchased in a box and requires some assembly" or patio furniture.^{FN3} At the session, Beath informed the city council that he believed it was advisable to consider revising the applicable zoning ordinance to clarify whether, and to what extent, furniture could be sold in the PC district, either by department stores or other retail stores. Representatives of the downtown furniture stores maintained that the zoning ordinance's general prohibition on **38 sales of furniture in the PC district was vital to the *287 economic health of the city's downtown district and should be retained and uniformly enforced. A representative of the mall maintained that the type of furniture currently sold in the existing department stores in the PC district differed from the furniture sold in the downtown furniture stores and should remain locally available through the department stores. At the conclusion of the session, the council instructed the city staff to draft a proposed revision of the ordinance to clarify its application, and in addition to inform the department stores in the PC district that, pending the city's consideration of possible ***447 changes to the zoning ordinance, those stores would have to remove all furniture from their display areas and refrain from selling any furniture (other than outdoor or patio furniture).^{FN4}

FN3. Specifically, the department's survey found that (1) Wal-Mart carried a variety of computer and entertainment centers, bookcases, tables, chairs, and patio furniture, all of which "is purchased in a box and requires some assembly"; (2) Home Depot and Sears carried only patio furniture; (3) Gottschalks carried only mattresses with headboards and footboards, although at one time the store also had sold chairs and sofas; and (4)

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Target, which was soon to open a store in the PC district, "displays and sells similar boxed furniture items as Wal-Mart."

The department's report also stated that "[t]he PC zone allows warehouse type stores such as Sam's Club and Costco which sell furniture typically found in a full scale furniture store." The report did not indicate, however, whether any warehouse-type store actually was located in the city's PC zone at that time.

FN4. At the March 4 session, the consensus of the council members was that the existing provisions of the ordinance should not be interpreted to prohibit the sale of outdoor or patio furniture.

Pursuant to the city council's direction, after the March 4 study session city employees informed the department stores in the PC district that they were required to remove all furniture (other than outdoor or patio furniture) from display and to refrain from selling such furniture pending the city's consideration of changes to the applicable zoning ordinance. During the next four months, the staff of the community development department, after soliciting input from the owners and managers of all of the affected stores in the PC and downtown commercial districts, submitted a series of proposed amendments relating to this issue, in response to changing directives of the city council at monthly study sessions that were held from April to July 2003. The various alternatives were debated vigorously by the directly affected businesses, with representatives of the downtown business district emphasizing the critical importance for the city's overall general welfare of preserving the economic viability of that district, and representatives of the large department stores located in the PC district observing that their stores had offered some furniture for sale for the past decade without having a negative impact on Hanford's downtown furniture stores,^{FN5} that virtually all of their sister stores in other locations contained furniture departments, and that the elimination of furniture departments in the department stores in Hanford could result in a substantial reduction of revenue for the city (by virtue of lost sales tax receipts) as well as for the individual stores.

FN5. The record indicates that the number of retail furniture stores in Hanford's downtown business district had increased from five stores in 1989 to 13 stores in 2003.

At one point during this process, a representative of the downtown furniture stores stated that those stores would not object to an amendment to the PC zoning provisions permitting department stores to continue selling ready-to-assemble furniture in the PC district as the department stores had done in the past, so long as a specific, mutually agreeable definition of *288 ready-to-assemble furniture was included within any such amendment. In response, the council directed the department staff to attempt to draft an amendment that would include a workable definition of ready-to-assemble furniture and that would permit such furniture to be sold at stores within the PC district, but limiting such sales activity to 5 percent of a store's floor space. After both the city staff and the affected businesses had devoted considerable time and effort to fashioning such a measure, however, it was determined that a definition of ready-to-assemble furniture that could be sold in the PC district could not be agreed upon by the affected parties, and that even if a mutually agreeable definition could be fashioned, it would be extremely difficult as a practical matter for city employees to enforce such a provision.^{FN6}

FN6. In the process of attempting to arrive at a mutually agreeable definition of ready-to-assemble furniture that could be sold in the PC district, the downtown furniture stores expressed the view that any acceptable definition would have to limit its reach to furniture that was constructed of specific kinds of material ("from Melamine and particle board and does not include furniture with wood veneers or high pressure laminates"). A letter subsequently submitted by the downtown merchants stated that "[a]s we've examined the proposed 5% RTA [ready-to-assemble] modification [of the ordinance], we find that a good working definition of RTA

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would be hard to determine (since everyone defines it differently) and we believe it would be nearly impossible to enforce."

***448 **39 Ultimately, on July 15, 2003, the city council adopted the amendment to the city zoning provisions relating to the sale of furniture in the PC district that is challenged in this case, Hanford Ordinance 03-03 (Ordinance No. 03-03).

Section 1 of Ordinance No. 03-03 adds definitions of "department store," "furniture," and "home furnishing accessories" to the general zoning provisions of the Hanford Municipal Code. "Department store" is defined as a retail store of at least 50,000 square feet "within which a variety of merchandise is displayed ... for sale in departments," and the section further provides that a department store within the PC district may display and sell furniture in only one location (and on only one level within that location) having a total floor space of no more than 2,500 square feet. "Furniture" is defined as "the things placed in a room which equip it for living," but "[h]ome appliances, outdoor/patio furniture, wall cabinets, garage storage units and home furnishing accessories as defined in this [s]ection" are excluded from the definition of furniture for purposes of the zoning law. "Home furnishing accessories," in turn, are defined as "compl[em]entary or decorative items placed in a room to accentuate the furniture," such as "curtains, draperies, blinds, ... mirrors, pictures, ... rugs, vases, ... floor lamps, [and] table lamps," but as not including furniture.

*289 Section 2 of Ordinance No. 03-03 adds as permissible uses within the PC district: "Department Stores" as defined in the ordinance, "Home Furnishing Accessories" as defined in the ordinance, and "Stores, which sell mattresses and metal bed frames with basic headboards and footboards that do not include shelves, drawers or sitting areas." Finally, section 3 of the ordinance adds a paragraph to the PC zoning provisions that specifically states: "The sale of furniture is prohibited in the PC zone district except by Department Stores in accordance with the definition of Department Stores" as set forth in the ordinance.

FN7

FN7. Ordinance No. 03-03 reads in full:

"Section 1:

"Section 17.04.030 of Chapter 17.04 of Title 17 of the Hanford Municipal Code is hereby amended to add the following definitions:

" 'Department Store' means a retail store measuring 50,000 square feet or more within the inside walls of such retail store, and within which a variety of merchandise is displayed and arranged for sale in departments within the store. Examples of types of department stores are: Wal-Mart, K-Mart, Costco, Sam's Club, Home Depot, Orchards, Target, Sears, Mervyn's, Penny's, Gottschalks, and Kohls. A department store located in the Planned Commercial District may sell furniture in only one department in the department store and the furniture for sale must be displayed in only one location in the department. The total floor space area of the one location in the department where the furniture for sale is displayed shall not be larger than 2,500 square feet and shall be limited to only one display level.

" 'Furniture' means the things placed in a room which equips it for living. Home appliances, outdoor/patio furniture, wall cabinets, garage storage units and home furnishing accessories as defined in this Section 17.04.030 are excluded from the definition of furniture.

" 'Home Furnishing Accessories' means compl[em]entary or decorative items placed in a room to accentuate the furniture. Examples of Home Furnishing Accessories are: curtains, draperies, blinds, shutters, mirrors, pictures, clocks (excluding grandfather or floor clocks), wall hangings, tapestries, carpet, rugs, vases, baskets, statues, flowers, floor lamps, table lamps and pictures and other similar items. Home Furnishing Accessories are not furniture.

"Section 2:

"Section 17.28.040 of Chapter 17.28 of Title 17 of the Hanford Municipal Code is hereby amended to add the following use:

"Department Stores as defined in Section 17.04.030.

"Home Furnishing Accessories as defined in Section 17.04.030.

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"Stores, which sell mattresses and metal bed frames with basic headboards and footboards that do not include shelves, drawers or sitting areas.

"Section 3:

"Section 17.28.040 of Chapter 17.28 of Title 17 of the Hanford Municipal Code is hereby amended to add paragraph 6 as follows:

" '6. The sale of furniture is prohibited in the PC zone district except by Department Stores in accordance with the definition of Department Stores set forth in Section 17.04.030 of Chapter 17.04 of this Title 17.'

"Section 4:

"This ordinance shall take effect thirty (30) days after its passage, and shall be published once in the Hanford Sentinel within fifteen (15) days after its passage."

***449 **40 Accordingly, the ordinance in question generally prohibits the sale of furniture in the PC district, but at the same time creates a limited exception *290 permitting a large department store within the PC district to display and sell furniture within a single location in the store measuring no more than 2,500 square feet.

Shortly after the ordinance was enacted, plaintiffs filed the present action against the city, challenging the validity of the ordinance on a number of grounds. Plaintiffs' complaint contended that the ordinance was invalid (1) because it was enacted for the primary purpose of regulating economic competition, and (2) because it violated the equal protection clauses of the federal and state Constitutions. After a bench trial, the trial court rejected plaintiffs' contentions and upheld the validity of the ordinance. With regard to plaintiffs' initial claim, the court concluded that the primary purpose of the ordinance was not the impermissible purpose of restricting or eliminating competition, but instead the valid objective of preserving the vitality of Hanford's downtown district while not discouraging large department stores from locating or remaining in the PC district. With regard to plaintiffs' equal protection claim, the court found that there was a rational basis for the ordinance's disparate treatment of large department stores and smaller retail stores like those owned by plaintiffs, because the city's expressed

interest in encouraging large department stores to locate and remain within the PC district did not extend to smaller stores.

On appeal, the Court of Appeal reversed the trial court's decision. Although the appellate court agreed with the trial court that the ordinance's general prohibition of the sale of furniture in the PC district was reasonably related to the legitimate governmental purpose of preserving the character and vitality of the city's downtown commercial district, the Court of Appeal further held that "with the blanket 2,500-square-foot restrictions on furniture in the PC zone, the small retailer poses the same potential threat, if any, to the downtown merchants as the larger store. Thus, limiting the furniture sales exception to stores with more than 50,000 square feet is arbitrary. A rational relationship between the size classification and the goal of protecting downtown simply does not exist." In rejecting the city's contention that the ordinance's disparate treatment between large department stores and other stores was justified because "the department store exception benefits the community by making the PC zone attractive to large retailers," the Court of Appeal stated simply that "it is not a detriment to have smaller retailers, such as Country Hutch [Home Furnishings], in the PC zone. Thus, the goal of promoting the PC zone does not validate the ordinance."

We granted the city's petition for review.

***291 II**

[1] Before reaching the equal protection issue upon which the Court of Appeal ***450 based its decision, we turn first to the more general (and more sweeping) contention that plaintiffs raised below and upon which they continue to rely in this court—that the zoning ordinance at issue is invalid because the "primary purpose" of the ordinance's general prohibition of the sale of furniture in the PC district assertedly was to "regulat[e] economic competition." Although neither the trial court nor the Court of Appeal found the ordinance invalid on

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this basis, as we shall see, plaintiffs' claim that the city exceeded its authority under the police power by enacting a zoning ordinance that regulates or restricts economic competition apparently is based upon some ambiguous and at least potentially misleading language that appears in a number of zoning decisions of the Courts of Appeal. As we shall explain, despite some arguably ambiguous language the decisions in these cases plainly do not support plaintiffs' challenge to the validity of the zoning ordinance here at issue, and we shall attempt to clarify the language in question to avoid possible confusion in the future.

Van Sicklen v. Browne (1971) 15 Cal.App.3d 122, 92 Cal.Rptr. 786 (*Van Sicklen*) is the earliest in the series of relevant Court of Appeal decisions. In *Van Sicklen*, the petitioner landowners applied for a conditional use permit to construct an automobile **41 service station, but the city denied the application on the ground, among others, that a proliferation of service stations already existed in the area and thus that there was no demonstrated need for an additional service station at that location at that time. On appeal, the landowners claimed the city had denied the use permit "for economic rather than planning considerations resulting in an invalid attempt to regulate competition through zoning laws." (15 Cal.App.3d at p. 127, 92 Cal.Rptr. 786.) In analyzing this contention, the court in *Van Sicklen* stated: "Although cities may not use zoning powers to regulate economic competition [citing three out-of-state decisions], it is also recognized that land use and planning decisions cannot be made in any community without some impact on the economy of the community. As stated in *Metromedia, Inc. v. City of Pasadena* [(1963)] 216 Cal.App.2d 270, 273, 30 Cal.Rptr. 731, 'Today, economic and aesthetic considerations together constitute the nearly inseparable warp and woof of the fabric upon which the modern city must design its future.' Taking cognizance of this concept we perceive that planning and zoning ordinances traditionally seek to maintain property values, protect tax revenues, provide neighborhood social and economic stability, attract business and industry and encourage conditions which make a community a pleasant place to live and work. Whether these be classified as 'planning

considerations' or 'economic considerations,' we hold that so long as the primary purpose of the zoning ordinance is not to regulate economic competition, but to subserve a valid objective pursuant to a city's police powers, such ordinance is not invalid even though *292 it might have an indirect impact on economic competition." (*Van Sicklen, supra*, 15 Cal.App.3d at pp. 127-128, 92 Cal.Rptr. 786.) The court in *Van Sicklen* then went on to uphold the city's denial of the use permit, concluding that "[i]ntensity of land use is a well-recognized and valid city concern and relates to both health and safety factors and to proper zoning practice" and "encompasses within its purview the degree of saturation in a particular area of land devoted to automobile service stations." (*Id.* at p. 128, 92 Cal.Rptr. 786.)

The passage from *Van Sicklen* quoted above correctly recognized many of the numerous factors and interests, including economic considerations, that a municipality properly may take into account in fashioning zoning ordinances and making zoning decisions, and we agree with the ***451 court's determination upholding the particular zoning action challenged in that case. We believe, however, that some of the language in the above quoted passage from *Van Sicklen* is at least potentially misleading. First, the initial general statement that "cities may not use zoning powers to regulate economic competition" (*Van Sicklen, supra*, 15 Cal.App.3d at p. 127, 92 Cal.Rptr. 786) is quite clearly overbroad. As one leading zoning treatise accurately observes: "[A]ll zoning has some impact on competition. [¶] The simple division of the community into districts has an inherent and profound effect on the real estate market, because some land is withdrawn from the commercial market and placed in the residential market.... Some competitive impact results from nearly every provision of the original zoning ordinance, and from each amendment. Accordingly, competitive impact alone cannot invalidate a zoning ordinance. A zoning ordinance which serves some established purpose of zoning is not necessarily invalid simply because it has the additional effect of limiting competition." (1 Anderson's American Law of Zoning (4th ed.1996) § 7.28, p. 807; see, e.g., *Boone v. Redevelopment Agency of San Jose* (9th

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Cir.1988) 841 F.2d 886, 890 ["The power to zone and rezone ... by its very nature encompasses the power to exclude competition"].)

Second, we believe that the additional statement in the quoted passage—that “so long as the primary purpose of the zoning ordinance is not to regulate economic competition, but to subserve a valid objective pursuant to [the] city’s police powers, such ordinance is not invalid even though it might have an indirect impact on economic competition” (*Van Sicklen, supra*, 15 Cal.App.3d 122, 128, 92 Cal.Rptr. 786)—also is ambiguous and at least potentially misleading. That language could be interpreted to suggest that a zoning ordinance is valid *only* when the ordinance has merely an “indirect impact” on economic competition, and *never* when the **42 regulation of economic competition is a direct and intended effect of the ordinance, even in instances in which a zoning ordinance uses the regulation of competition simply as a means or tool to achieve an authorized and valid *public* purpose—such as the preservation of an existing downtown commercial district—rather than to serve an impermissible *private* anticompetitive purpose or interest—such as securing a *293 financial advantage or monopoly position for the benefit of a favored business or individual or imposing a disadvantage on an unpopular business or individual. As so interpreted, the language would be inaccurate. As we shall see, although this language from *Van Sicklen* has been repeated in subsequent Court of Appeal decisions, those decisions have not invalidated zoning actions simply because such actions reasonably could be viewed as having more than a mere indirect impact on economic competition. Instead, the more recent decisions have upheld zoning actions even when regulation of economic competition reasonably could be viewed as a direct and intended effect of a challenged zoning action, so long as the primary purpose of the zoning action—that is, its principal and ultimate objective—is to achieve a valid *public* purpose such as furthering a municipality’s general plan for controlled growth or for localized commercial development, rather than simply to serve an impermissible anticompetitive *private* purpose such as investing a favored private business with monopoly power or excluding an unpopular

company from the community.

The case of *Ensign Bickford Realty Corp. v. City Council* (1977) 68 Cal.App.3d 467, 137 Cal.Rptr. 304 (*Ensign Bickford*) provides a good illustration of this point. In *Ensign Bickford*, the plaintiff owned property in the City of Livermore that originally had been zoned “CN,” a classification permitting neighborhood commercial ***452 facilities, but that thereafter had been rezoned “RS-4,” permitting residential use only. Having planned to construct a neighborhood shopping center on its property and already having obtained a commitment from a grocery store chain to be a major tenant, the plaintiff requested the city to rezone its property CN. Upon the recommendation of the city planning commission, the city council denied the request, explaining that the city recently had zoned property in another nearby area—the Springtown neighborhood, in which the city was attempting to encourage development—to permit the construction of a neighborhood shopping center and that the city did not believe that the residential population in the relevant area was sufficient to support two shopping centers. (68 Cal.App.3d at pp. 471-472, 137 Cal.Rptr. 304.)

In response to the city’s action, the plaintiff filed the lawsuit in *Ensign Bickford*. The trial court ruled in the plaintiff’s favor, finding that the city’s purpose in denying the plaintiff’s application “was to encourage development of the Springtown CN zoned property by eliminating a competitive economic threat to such property, and that the council’s decision was not predicated upon consideration of public health, welfare, safety or morals.” (*Ensign Bickford, supra*, 68 Cal.App.3d at p. 472, 137 Cal.Rptr. 304.)

On appeal, the Court of Appeal reversed. After quoting at length the passage from *Van Sicklen, supra*, 15 Cal.App.3d 122, 127-128, 92 Cal.Rptr. 786, set forth above, the court in *Ensign Bickford* continued: “Here, the city council *294 determined that the area needed and would support one shopping center, and that to further the long-range development plan for the city, the shopping center should not be located on Bickford’s

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property, but in Springtown. This would have the effect of encouraging residential and commercial development in that area. It would also undoubtedly have the effect of decreasing the market or lease value of [Bickford's] property. By its very nature, a zoning ordinance may be expected to depress the value of some land while it operates, in its total effect, to achieve an end which will benefit the whole community.... [¶] ... Here, the city is attempting to regulate *where*, within the city, business will be developed. In furtherance of this legitimate end, it is necessary to permit business development in one area before allowing commercial development in another. The economic impact upon the property involved is only incidental. The primary purpose is clearly the reasonable regulation of land use. [Citation.] There is ^{**43} no evidence, nor can it be inferred, that the city council was attempting to permit commercial development on one parcel and deny it as to another for the purpose of creating a business monopoly or to unreasonably regulate the commercial development of the city. To the contrary, the council was regulating the commercial growth of the city as it related to the needs of the residential areas for that commercial development.” (*Ensign Bickford*, *supra*, 68 Cal.App.3d at pp. 477-478, 137 Cal.Rptr. 304.)

Accordingly, although the city's denial of the plaintiff's rezoning request in *Ensign Bickford* reasonably could be viewed as having the direct and intended effect of regulating or limiting competition (that is, precluding the potential competition that would have resulted from the construction of a competing shopping center on the plaintiff's property), the court in *Ensign Bickford* nonetheless upheld the validity of the city's action, recognizing that the primary purpose of the city's regulation of competition in this context was not to further or disadvantage a private business but instead was to serve the city's legitimate public interest in carefully planning ^{***453} and controlling the pace and location of growth within the city.^{FN8}

FN8. In *Carty v. City of Ojai* (1978) 77 Cal.App.3d 329, 143 Cal.Rptr. 506, the Court of Appeal similarly rejected a

challenge to a city's action in rezoning property located at the outskirts of the city to prohibit the development of a shopping center on the property. Although the plaintiffs in that case did not challenge the rezoning as an improper regulation of competition, they did maintain that the city's action was “arbitrary and discriminatory.” (*Id.*, at p. 333, 143 Cal.Rptr. 506.) In rejecting that claim, the court in *Carty*, noting that the city's general plan—which had been adopted many years earlier—recognized the potentially deleterious effect on the city's downtown commercial area that might result if private commercial development occurred in the outlying areas of the city rather than in the downtown area, concluded that “long before the adoption of [the challenged ordinance] the [city] officials acted to encourage and promote the orderly growth and development of their community in the manner recommended by the general plan.

The adoption of the [rezoning ordinance] is consonant with that purpose.” (77 Cal.App.3d at p. 339, 143 Cal.Rptr. 506.)

^{*295} The more recent case of *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 41 Cal.Rptr.3d 420 (*Wal-Mart*) provides another apt example. In *Wal-Mart*, the City of Turlock enacted a zoning ordinance that, while permitting the operation of traditional “big box” discount stores in a designated district, prohibited the development, anywhere in the city, of so-called discount superstores—defined generally as large discount stores that include a full-service grocery department.^{FN9} In explaining the rationale underlying the restriction on discount superstores, the ordinance set forth a series of facts or findings, stating in part that (1) “the Turlock General Plan ... establishes locational requirements for [regional and neighborhood] retail centers; encouraging a number of neighborhood centers equally dispersed throughout the city while encouraging a concentration of regional shopping centers along the Highway 99/Countryside Drive corridor” (*id.* at p. 283, 41 Cal.Rptr.3d 420); (2) the city's “General Plan policies promote and encourage vital

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neighborhood commercial districts that are evenly distributed throughout the city so that residents are able to meet their basic daily shopping needs at neighborhood shopping centers' " (*ibid.*); (3) " 'discount superstores compete directly with existing grocery stores that anchor neighborhood-serving commercial centers' " (*ibid.*); (4) " 'the establishment of discount superstores in Turlock is likely to negatively impact the vitality and economic viability of the **44 city's neighborhood commercial centers by drawing sales away from traditional supermarkets located in these centers' " (*ibid.*); and (5) " 'smaller stores within a neighborhood center rely upon the foot traffic generated by the grocery store for their existence and in neighborhood centers where the grocery store closes, vacancy rates typically increase and deterioration takes place in the remaining center.' " (*Ibid.*)

FN9. The Turlock ordinance defined "discount stores" as " 'stores with off-street parking that usually offer a variety of customer services, centralized cashing, and a wide range of products. They usually maintain long store hours seven (7) days a week. The stores are often the only ones on the site, but they can also be found in mutual operation with a related or unrelated garden center or service station. Discount stores are also sometimes found as separate parcels within a retail complex with their own dedicated parking.' " (*Wal-Mart, supra*, 138 Cal.App.4th at p. 282, 41 Cal.Rptr.3d 420.)

The ordinance defined "discount superstore" as a "discount store that exceeds 100,000 square feet of gross floor area and devotes at least 5 percent of the total sales floor area to the sale of nontaxable merchandise, often in the form of a full-service grocery department." (*Wal-Mart, supra*, 138 Cal.App.4th at p. 282, 41 Cal.Rptr.3d 420.)

***454 Wal-Mart filed an action challenging the validity of the ordinance on a variety of grounds, including the contention that the ordinance exceeded the city's police powers because it was "designed to suppress economic competition, and is

not reasonably related to the public welfare." (*Wal-Mart, supra*, 138 Cal.App.4th 273, 299, 41 Cal.Rptr.3d 420.) In rejecting this argument, the Court of Appeal in *Wal-Mart* stated: "With respect to Wal-Mart's claim of anticompetitive purpose, we agree with the trial court that, while the Ordinance likely will *296 have an anticompetitive effect in the grocery business in [the City of Turlock], that incidental effect does not render arbitrary an ordinance that was enacted for a valid purpose. [Citing *Van Sicklen, supra*, 15 Cal.App.3d 122, 92 Cal.Rptr. 786.] While zoning ordinances may not legitimately be used to control economic competition, they may be used to address the urban/suburban decay that can be its effect. [Citing, among other cases, *Ensign Bickford, supra*, 68 Cal.App.3d 467, 477-478, 137 Cal.Rptr. 304.]" (*Wal-Mart, supra*, 138 Cal.App.4th at p. 302, 41 Cal.Rptr.3d 420.) The appellate court in *Wal-Mart* concluded: "In summary, the police power empowers cities to control and organize development within their boundaries as a means of serving the general welfare. [The City of Turlock] legitimately chose to organize the development within its boundaries using neighborhood shopping centers dispersed throughout the city. The Ordinance is reasonably related to protecting that development choice." (*Wal-Mart, supra*, 138 Cal.App.4th at p. 303, 41 Cal.Rptr.3d 420.)

Accordingly, although the zoning ordinance in *Wal-Mart, supra*, 138 Cal.App.4th 273, 41 Cal.Rptr.3d 420, like the zoning action in *Ensign Bickford, supra*, 68 Cal.App.3d 467, 137 Cal.Rptr. 304, reasonably could be viewed as having a direct and intended effect of regulating competition, the court in *Wal-Mart* nonetheless upheld the validity of the ordinance because the principal and ultimate objective of the ordinance's regulation of competition was to further the city's legitimate public interest in avoiding the "urban/suburban decay" that may result from the location of some types of large-scale commercial development in an outlying area of a municipality.

Our court has not previously had occasion to address the question whether a municipality, in order to protect or preserve the economic viability of its downtown business district or neighborhood

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shopping areas, may enact a zoning ordinance that regulates or controls competition by placing limits on potentially competing commercial activities or development in other areas of the municipality. More than a half-century ago, however, this court explained that “[i]t is well settled that a municipality may divide land into districts and prescribe regulations governing the uses permitted therein, and that zoning ordinances, when reasonable in object and not arbitrary in operation, constitute a justifiable exercise of police power.” (*Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 460, 202 P.2d 38; see also *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604-605, 135 Cal.Rptr. 41, 557 P.2d 473; see generally Cal. Const., art. XI, § 7; Gov.Code, § 65800 et seq.) As the circumstances underlying the decisions in *Ensign Bickford*, *supra*, 68 Cal.App.3d 467, 137 Cal.Rptr. 304, and *Wal-Mart*, *supra*, 138 Cal.App.4th 273, 41 Cal.Rptr.3d 420, demonstrate, even when the regulation of economic competition reasonably can be viewed as a direct and intended effect of a zoning ordinance or action, so long as the primary purpose of the ordinance or action—that is, its *297 principal and ultimate objective—is not the impermissible private anticompetitive***455 goal of protecting or disadvantaging a particular favored or disfavored business or individual, but instead is the advancement of a legitimate public purpose—such as the preservation of a municipality’s downtown business district for the benefit of the municipality as **45 a whole—the ordinance reasonably relates to the general welfare of the municipality and constitutes a legitimate exercise of the municipality’s police power. (Accord, *Lockard v. City of Los Angeles*, *supra*, 33 Cal.2d 453, 466, 202 P.2d 38 [“in determining what uses should be permitted in the 12-block strip, the legislative body was, of course, entitled to consider the effect of such uses on the surrounding areas, and to weigh the possibility of injury to those areas by reason of permitting various types of activity as against the desirability of allowing such uses”]; see generally 1 Rathkopf, *The Law of Zoning and Planning* (1998 rev. ed.) § 2:20, pp. 2-59 to 2-61; Strom, *Land Use Controls: Effects on Business Competition II* (1980) 6 Zoning & Planning L.Rep. 41, 46.) FN10 To the extent that any language in *Van Sicklen*,

supra, 15 Cal.App.3d 122, 92 Cal.Rptr. 786, *Ensign Bickford*, *supra*, 68 Cal.App.3d 467, 137 Cal.Rptr. 304, or *Wal-Mart*, *supra*, 138 Cal.App.4th 273, 41 Cal.Rptr.3d 420, may be interpreted as inconsistent with this conclusion, such an interpretation is disapproved. FN11

FN10. Numerous cases in other jurisdictions have upheld zoning ordinances that limit some or all commercial development in outlying locations in order to protect or strengthen the economic viability of a municipality’s central business district. (See, e.g., *Jacobs, Visconsi, & Jacobs Co. v. City of Lawrence* (10th Cir.1991) 927 F.2d 1111, 1119[“[T]he district court correctly concluded that retaining the vitality of the downtown area was a legitimate interest of the city commission. Declining to rezone property in a manner that would threaten the vitality of the downtown retail area is rationally related to that purpose”]; *E & G Enterprises v. City of Mount Vernon* (Iowa Ct.App.1985) 373 N.W.2d 693, 694 [“Mount Vernon’s effort to preserve its downtown business area is a valid exercise of police power.... [P]reservation of that area promotes the public welfare, including the maintenance of property values”]; *Forte v. Borough of Tenafly* (App.Div.1969) 106 N.J.Super. 346, 255 A.2d 804, 806 [“May a municipality which wishes to preserve, rehabilitate and improve an established business area devoted chiefly to retail stores, zone the rest of the municipality against retail sales? We hold that it may”]; *Chevron Oil Co. v. Beaver County* (1969) 22 Utah 2d 143, 449 P.2d 989, 990 [county’s refusal to rezone land in outlying area to permit “highway services” development was justified “on the ground that any tourist business which would go to the isolated junction area would be a loss to the established businesses of Beaver City”].)

FN11. The case of *Friends of Davis v. City*

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of *Davis* (2000) 83 Cal.App.4th 1004, 100 Cal.Rptr.2d 413, relied upon by plaintiffs and amicus curiae on behalf of plaintiffs, is entirely consistent with our conclusion. In that case, the plaintiff organization, which opposed the opening of a proposed Borders bookstore in the City of Davis, contended that the city had erred in interpreting its design review ordinance as not authorizing the city to consider the identity of a proposed tenant for a particular development as part of the design review process. In rejecting the plaintiff's contention, the Court of Appeal observed: "Zoning and building laws 'cannot be used unqualifiedly to restrict competition' [citation], or simply to shield existing businesses from competition [citations]. While valid zoning regulations may affect competition and have other economic effects, a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like." (83 Cal.App.4th at p. 1013, 100 Cal.Rptr.2d 413.) Nothing in *Friends of Davis* suggests that a city may not use its zoning power to limit a particular type of commercial activity in one or more parts of the city in order to protect and preserve the economic viability of the city's downtown commercial district.

[2] *298 In the present case, it is clear that the zoning ordinance's general prohibition on the sale of furniture in the PC ***456 district-although concededly intended, at least in part, to regulate competition-was adopted to promote the legitimate public purpose of preserving the economic viability of the Hanford downtown business district, rather than to serve any impermissible private anticompetitive purpose. Furthermore, as in *Ensign Bickford, supra*, 68 Cal.App.3d 467, 137 Cal.Rptr. 304, here the zoning ordinance's restrictions are aimed at regulating "where, within the city" (*id.* at p. 477, 137 Cal.Rptr. 304), a particular type of business generally may be located, a very traditional zoning objective. Under these circumstances, we agree with the lower courts' conclusion that the zoning ordinance cannot be

found invalid as an improper limitation on competition.

III

[3] As noted above, although the Court of Appeal agreed that the challenged zoning ordinance's general prohibition on the sale of furniture in the PC district is permissible, that court concluded the ordinance in question violates the equal protection clause by limiting the exception created by the ordinance**46 to only the sale of furniture by large department stores, and not making the exception available to other retail stores wishing to sell furniture within the same amount of square-footage permitted for furniture sales by large department stores. The Court of Appeal found that, in this context, the ordinance's disparate treatment of large department stores and other retail stores is not constitutionally permissible.

In evaluating the Court of Appeal's resolution of this issue, we begin with the question of the appropriate equal protection standard applicable in this case. As explained in *Warden v. State Bar* (1999) 21 Cal.4th 628, 88 Cal.Rptr.2d 283, 982 P.2d 154, there are "two principal standards or tests that generally have been applied by the courts of this state and the United States Supreme Court in reviewing classifications that are challenged under the equal protection clause of the Fourteenth Amendment of the United States Constitution or article I, section 7, of the California Constitution...." The first is the basic and conventional standard for reviewing economic and social welfare legislation in which there is a "discrimination" or differentiation of treatment between classes or individuals. It manifests restraint by the judiciary in relation to the discretionary act of a co-equal branch of government; *299 in so doing it invests legislation involving such differentiated treatment with a presumption of constitutionality and "requir[es] merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose." [Citation.] ... Moreover, the burden of demonstrating the

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invalidity of a classification under this standard rests squarely upon *the party who assails it.*" (*Warden, supra*, 21 Cal.4th at pp. 640-641, 88 Cal.Rptr.2d 283, 982 P.2d 154.) This first basic equal protection standard generally is referred to as the "rational relationship" or "rational basis" standard.

As further explained in *Warden, supra*, 21 Cal.4th 628, 88 Cal.Rptr.2d 283, 982 P.2d 154, the second equal protection standard is " '[a] more stringent test [that] is applied ... in cases involving "suspect classifications" or touching on "fundamental interests." Here the courts adopt "an attitude of active and critical analysis, subjecting the classifications to strict scrutiny. [Citations.] Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose." [Citation.]' " (*Warden, supra*, 21 Cal.4th at p. 641, 88 Cal.Rptr.2d 283, 982 P.2d 154.) This second standard generally is ***457 referred to as the "strict scrutiny" standard.

FN12

FN12. In applying the federal equal protection clause, the United States Supreme Court has applied a third standard—"intermediate scrutiny"—"to discriminatory classifications based on sex or illegitimacy." (*Clark v. Jeter* (1988) 486 U.S. 456, 461, 108 S.Ct. 1910, 100 L.Ed.2d 465.) It is clear that that standard is inapplicable here.

[4] The zoning ordinance at issue in the present case does not involve suspect classifications or touch upon fundamental interests and thus, as the Court of Appeal recognized and as all parties agree, the applicable standard under which plaintiffs' equal protection challenge properly must be evaluated is the rational relationship or rational basis standard.

As noted above, in finding the exception set forth in the ordinance invalid under the rational relationship test, the Court of Appeal reasoned that "with the blanket 2,500-square-foot restrictions on

furniture in the PC zone, the small retailer poses the same potential threat, if any, to the downtown merchants as the larger store. Thus, limiting the furniture sales exception to stores with more than 50,000 square feet is arbitrary. A rational relationship between the size classification and the goal of protecting downtown simply does not exist."

We disagree with the Court of Appeal's determination that the ordinance violates the equal protection clause. The Court of Appeal's conclusion *300 effectively rests on the premise that there was only a single purpose underlying the challenged ordinance—the protection of furniture stores located in the downtown business district from potential competition by retail establishments conducting business within the PC district. Because **47 the Court of Appeal was of the view that the disparate treatment in the ordinance's exception of large department stores and other stores was not rationally related to *that* purpose, the appellate court concluded the exception was invalid.

Both the terms and legislative history of the measure at issue disclose, however, that the ordinance was intended to serve *multiple* purposes: to protect the economic health and viability of the city's downtown furniture stores, but to do so in a manner that did not threaten or detract from the city's ability to attract and retain large department stores in the PC district. Past cases establish that the equal protection clause does not preclude a governmental entity from adopting a legislative measure that is aimed at achieving multiple objectives, even when such objectives in some respects may be in tension or conflict.

The United States Supreme Court's relatively recent decision in *Fitzgerald v. Racing Assn. of Central Iowa* (2003) 539 U.S. 103, 123 S.Ct. 2156, 156 L.Ed.2d 97 (*Fitzgerald*) demonstrates this point. In *Fitzgerald*, the court addressed the constitutionality of a 1994 Iowa statute that imposed a maximum tax rate of 20 percent on revenues generated by slot machines located on excursion riverboats, but imposed a maximum tax rate of 36 percent on revenues generated by slot machines located at racetracks. In describing the background of the statute, the high court in

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Fitzgerald explained that prior to 1989 Iowa had permitted only one form of gambling-parimutuel betting at racetracks-but that in 1989 the state authorized other forms of gambling, including the use of slot machines on riverboats, and at the same time imposed a maximum tax rate of 20 percent on revenues generated by the riverboat slot machines. Thereafter, in 1994, the state enacted the statute at issue in *Fitzgerald*-a provision that for the first time authorized racetracks to operate slot ***458 machines, imposed a maximum tax rate of 36 percent on revenues generated by the racetrack slot machines, and (while making other changes with regard to riverboat slot machines) left the maximum tax rate on riverboat slot machine revenue at 20 percent.

After the 1994 statute was enacted, a group of racetracks brought a state court action challenging the constitutionality, under the equal protection *301 clause, of the 20 percent/36 percent differential in maximum tax rates imposed on riverboat and racetrack slot machine revenues. The state trial court upheld the statute, but on appeal the Iowa Supreme Court, by a 4-3 vote, reversed the lower court decision. In reaching its conclusion, the majority opinion of the Iowa Supreme Court reasoned that the “ ‘differential tax completely defeats the alleged purpose’ of the statute, namely, ‘to help the racetracks recover from economic distress,’ that there could ‘be no rational reason for this differential tax,’ and that the Equal Protection Clause consequently forbids its imposition.” (*Fitzgerald, supra*, 539 U.S. at p. 106, 123 S.Ct. 2156.) Thereafter, the United States Supreme Court granted certiorari and unanimously reversed the Iowa Supreme Court decision.

In holding that the challenged statute did not violate equal protection principles, the United States Supreme Court explained in *Fitzgerald* that the Iowa Supreme Court could not deny “that the Iowa law, like most laws, might predominantly serve one general objective, say, helping the racetracks, while containing subsidiary provisions that seek to achieve other desirable (perhaps even contrary) ends as well, thereby producing a law that balances objectives but still serves the general objective when seen as a whole.” (*Fitzgerald,*

supra, 539 U.S. at p. 108, 123 S.Ct. 2156.) The high court continued in *Fitzgerald*: “Once one realizes that not every provision in a law must share a single objective, one has no difficulty finding the necessary rational support for the 20 percent/36 percent differential here at issue. That difference, harmful to racetracks, is helpful to the riverboats, which, as respondents concede, were also facing financial peril.... And aside from simply aiding the financial position of the riverboats, the legislators may have wanted to encourage the economic development of river communities or to promote riverboat history, say, by providing incentives for riverboats to remain in the State, rather than relocate to other States.... Alternatively, they may have wanted to protect **48 the reliance interests of riverboat operators, whose adjusted slot machine revenue had previously been taxed at the 20 percent rate. All these objectives are rational ones, which lower riverboat tax rates could further and which suffice to uphold the different tax rates.” (*Fitzgerald, supra*, 539 U.S. at p. 109, 123 S.Ct. 2156; accord, e.g., *Kadrmas v. Dickinson Public Schools* (1988) 487 U.S. 450, 462-463, 108 S.Ct. 2481, 101 L.Ed.2d 399 [“ ‘[W]e will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature’s actions were irrational’ ” (italics added)]; *Railroad Retirement Bd. v. Fritz* (1980) 449 U.S. 166, 181, 101 S.Ct. 453, 66 L.Ed.2d 368 (conc. opn. of Stevens, J.) [legislation often is the “product of multiple and somewhat inconsistent purposes that led to certain compromises”].)

Like the Iowa statute at issue in *Fitzgerald, supra*, 539 U.S. 103, 123 S.Ct. 2156, 156 L.Ed.2d 97, the Hanford ordinance challenged here clearly was intended to serve multiple *302 purposes. The city desired to protect the economic viability of its downtown business district, but at the same time it did not wish to diminish the ***459 financial benefits of the PC district for the large department stores that it wanted to attract and maintain in that district. Because the city viewed large department stores as particularly significant elements of the PC district, and because the management of those stores had made clear the importance to them of retaining

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their ability to offer furniture sales that typically were offered by their sister stores in other locations, it was rational for the city to decide to provide an exception from the general prohibition on furniture sales in the PC district for such large department stores and only such stores. The circumstance that the city also decided to limit the exemption afforded to department stores by placing a square-foot limit on the area within each store in which furniture could be displayed does not in any manner detract from the rationality of limiting the exception to large department stores.

Accordingly, contrary to the Court of Appeal's determination, we conclude that the ordinance's differential treatment of large department stores and other retail stores is rationally related to one of the legitimate legislative purposes of the ordinance—the purpose of attracting and retaining large department stores within the PC district. The Court of Appeal's resolution of this issue, which would have required the city to extend the ordinance's 2,500-square-foot exception for furniture sales to *all* retail stores within the PC district, would have undermined the ordinance's overall objective of permitting the sale of furniture in the PC district only to the extent such activity is necessary to serve the city's interest in attracting and retaining large department stores in that district.^{FN13}

FN13. Plaintiffs alternatively contend that the amended ordinance is unconstitutional because the city arbitrarily singled them out for discriminatory treatment (see, e.g., *Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 120 S.Ct. 1073, 145 L.Ed.2d 1060), relying on the circumstance that the city's enactment of the amendment was triggered by plaintiffs' complaint that they were being treated differently from the large department stores located in the PC district. The trial court rejected this claim, and we agree with that court's conclusion. There is no indication the city's action was based upon hostility toward plaintiffs; the amended ordinance prohibits the sale of furniture in the PC district by *all* retail stores other

than large department stores and does not single out plaintiffs' store for disparate treatment. As the Court of Appeal explained in *Wal-Mart, supra*, 138 Cal.App.4th 273, 302-303, 41 Cal.Rptr.3d 420, in rejecting a similar claim proffered by Wal-Mart in that case: "[T]he simple fact that Wal-Mart was the first company to feel the effect of the Ordinance is not sufficient to establish that Wal-Mart was targeted in any unconstitutional manner. If that fact were enough to require a finding that a local governmental entity had exceeded its police power, then local government could never react to new situations brought to its attention by a specific proposal without having the reaction invalidated under the claim that it 'targeted' the specific proposal. In short, local governments need the flexibility to react to specific proposals for a new kind of development not previously contemplated where such a development will or may have harmful consequences to the locality's legitimate planning objectives."

*303 IV

In sum, the Court of Appeal erred in invalidating the ordinance at issue. The judgment of the Court of Appeal is reversed.

KENNARD, BAXTER, WERDEGAR, CHIN, MORENO, and CORRIGAN, JJ., concur.
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No. 07-2-29402-3 SEA

COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
2008 DEC 10 PM 3:45

PHOENIX DEVELOPMENT, INC., a Washington
Corporation, and G&S SUNDQUIST THIRD FAMILY
LIMITED PARTNERSHIP, a Washington Limited
Partnership,

Appellants,

v.

CITY OF WOODINVILLE, a Washington Municipal
Corporation, and CONCERNED NEIGHBORS OF
WELLINGTON, a Washington Nonprofit Corporation,

Respondent.

DECLARATION OF SERVICE

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ORIGINAL

N. Kay Richards hereby makes the following declaration pursuant to CR 5(b)(B) and RCW 9A.72.085: I am now and was at all times material hereto over the age of 18 years. I am not a party to the above-entitled action and am competent to be a witness herein. I certify that I on December 10, 2008, I messengered a copy of Brief of Respondent City of Woodinville and this Declaration of Service to the following counsel:

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I also mailed a copy of these documents to John Groen, Groen Stephens & Klinge, LLC, 11100 NE 8th St., Suite 750, Bellevue, WA 98004-4469.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

12/10/08 Seattle, WA
Date and Place

N. Kay Richards
N. Kay Richards